***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

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74-2276

# United States Court of Appeals

FOR THE SECOND CIRCUIT

---

WEITNAUER TRADING COMPANY LTD.,

*Plaintiff-Appellee,*

—against—

MORTON L. ANNIS,

*Defendant-Appellant.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

## APPENDIX

RICH KRINSLY POSES KATZ & LILLIENSTEIN
*Attorneys for Defendant-Appellant*
99 Park Avenue
New York, New York 10016
867-7200

WIKLER GOTTLIEB TAYLOR & HOWARD
*Attorneys for Plaintiff-Appellee*
40 Wall Street
New York, New York 10005
422-1080

LANKENAU KOVNER BICKFORD & ABRONS
Trial Counsel
30 Rockefeller Plaza
New York, New York 10020
489-8230

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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS


| | Page |
|---|---|
| Docket Entries | 1A |
| Complaint | 4A |
| Summons | 13A-1 |
| Answer | 14A |
| Reply to Counterclaim | 17A |
| Opinion #38226 by Judge Croake (on Motion for Summary Judgment) | 19A |
| Note of Issue and Statement of Readiness | 28A |
| Transcript of Record of Proceedings | 30A |
| Opinion #40812 of Court Below | 444A |
| Judgment and Order of Court Below | 456A |
| Notice of Appeal | 458A |
| Endorsement by Court Below Modifying Judgment | 459A |
| Modified Judgment #74,784 and Order | 461A |
| Notice of Appeal | 463A |
| Exhibits | 292A |


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# I N D E X

| WITNESS | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| Fritz Maier | 8 (37A) | 126 (155A) | 183 (212A) | 184 (213A) |
| Ordway Hilton | 191 (220A) | 222 (251A) | | |
| Mortin Annis, Sr. | 252 (281A) | | | |

## E X H I B I T S

| PLAINTIFF'S | | FOR IDENT. | IN EVD. | Printed Page |
|---|---|---|---|---|
| 1 | "Notes" dated 10/16/68 | 12 (41A) | 13 (42A) | 292A |
| 2 | Letter 10/25/68 | 4 (33A) | 16 (45A) | 294A |
| 3 | Letter 2/5/69 | 4 (33A) | 17 (46A) | 295A |
| 4 | Letter 4/7/69 | 4 (34A) | 19 (48A) | 297A |
| 5 | Letter 6/9/69 | 4 (34A) | 20 (48A) | 300A |
| 6 | Letter 6/16/69 | 5 (34A) | 26 (55A) | 301A |
| 7 | Letter 7/3/69 | 6 (35A) | 34 (63A) | 302A |
| 7A | Document | 122 (151A) | | 304A |
| 8 | Letter 7/10/79 | 6 (35A) | 42 (71A) | 305A |
| 9 | Letter 8/20/69 | 6 (35A) | 42 (71A) | 307A |
| 10 | Letter 9/22/69 | 6 (35A) | 43 (72A) | 308A |
| 11 | Document | | 122 (151A) | 312A |
| 12 | Document | | 122 (151A) | 314A |
| 13 | Telex | | 61 (90A) | 315A |
| 14 | Telegram | | 66 (95A) | 316A |
| 15 | Document | | 73 (102A) | 319A |
| 16 | Letter | | 75 (104A) | 322A |

PAGE NUMBERS FOLLOWED BY THE INITIAL "A" REFER TO PAGES OF THE PRINTED APPENDIX

INDEX OF EXHIBITS (Cont'd)

| PLAINTIFF'S | | FOR IDENT. | IN EVID. | Printed Page |
|---|---|---|---|---|
| 17 | Letter | | 76 (105A) | 323A |
| 18 | Letter 11/4/69 | 6 (35A) | 78 (107A) | 324A |
| 19 | Letter 1/13/70 | 7 (36A) | 80 (109A) | 325A |
| 20 | Document | | 91 (120A) | 326A |
| 21 | Letter | | 96 (125A) | 327A |
| 22 | Letter 2/5/70 | 7 (36A) | 101 (130A) | 328A |
| 23 | Letter | | 103 (132A) | 330A |
| 24 | Letter 3/31/70 | 7 (36A) | 103 (132A) | 331A |
| 25 | Letter 6/19/70 | 7 (36A) | 104 (133A) | 332A |
| 26 | Letter | | 105 (134A) | 335A |
| 28 | Letter 9/22/70 | 7 (36A) | 106 (135A) | 337A |
| 29 | Letter 10/6/70 | 7 (36A) | 108 (137A) | 338A |
| 30 | Letter 10/13/70 | 7 (36A) | 110 (139A) | 340A |
| 31 | Letter 11?16/70 | 7 (36A) | 111 (140A) | 341A |
| 32 | Letter 11/18/70 | 7 (36A) | 112 (141A) | 342A |
| 33 | Letter 12/9/70 | 8 (37A) | 112 (141A) | 343A |
| 34 | Letter 12/16/70 | 8 (37A) | 112 (141A) | 344A |
| 35 | Letter 12/31/70 | 8 (37A) | 112 (141A) | 345A |
| 36 | Letter 1/18/71 | 8 (37A) | 114 (143A) | 346A |
| 37 | Letter 1/18/71 | 8 (37A) | 114 (143A) | 349A |
| 38 | Letter 1/19/71 | 8 (37A) | 114 (143A) | 350A |
| 39 | Letter 2/19/71 | 8 (37A) | 117 (146A) | 352A |

PAGE NUMBERS FOLLOWED BY THE INITIAL "A" REFER TO PAGES OF THE PRINTED APPENDIX

INDEX OF EXHIBITS (Cont'd)

| PLAINTIFF'S | | FOR IDENT. | IN EVID. | Printed Page |
|---|---|---|---|---|
| 40 | Document | | 122 (151A) | 356A |
| 41 | Document | 198 (227A) | 205 (234A) | 360A |
| 41A | Document | 198 (227A) | 205 (234A) | 359A |
| 42 | Document | 201 (230A) | 204 (233A) | 361A |
| 42A | Document | 202 (231A) | 204 (233A) | 368A |
| 43 | Document | | 256 (285A) | 376A |
| DEFENDANT'S | | | | |
| A | Document | 154 (183A) | | 425A |
| B | Document 10/1/69 | 172 (201A) | | 429A |
| C | Document | 172 (201A) | | 430A |
| D, D-1 | Cables | 176 (205A) | 178 (207A) | 431A-432A |
| E | Letter | 177 (206A) | | 433A |
| F | Letter | 185 (214A) | 185 (214A) | 434A |
| G | Document | 186 (215A) | 187 (216A) | 435A |
| H | Document | 187 (216A) | | 436A |
| H | Telex | 188 (217A) | 188 (217A) | 436A |
| I | Western Union form | 189 (218A) | 189 (218A) | 437A |
| J | Telex | 188 (217A) | 188 (217A) | 438A |
| K | Document 10/5/73 | 246 (275A) | | 439A |

PAGE NUMBERS FOLLOWED BY THE INITIAL "A" REFER TO PAGES OF THE PRINTED APPENDIX

WEITRAUER TRADING COMPANY LTD. VS. MORTON L. ANNIS

1A 71 CIV. 782

| DATE | PROCEEDINGS | Date Order or Judgment No |
|---|---|---|
| 3-23-71 | Filed Complaint. Issued Summons. | |
| 3-31-71 | Filed summons with marshal's ret. Served Morton L. Annis by Aleida Doncha on 3-31-71 | |
| 4-20-71 | Filed Answer to complaint. | NRI:K |
| 5-6-71 | Filed Notice to take Oral deposition of Morton L. Annis. | |
| 7-11-71 | Filed Reply to counterclaim. | |
| 11-23-71 | Filed Notice of Motion re: Summary Judgment. Ret. 11/30/71. (by Pltf. | |
| 11-23-71 | Filed Plaintiff's Memorandum of Law. | |
| 11-20-71 | Filed Affidavit of Morton L. Annis in opposition to pltf's.motion for summary judgt. | |
| 11-20-71 | Filed Defendant's Memorandum opposing motion for summary judgment. | |
| 12/21/71 | Filed ( in court) Deposition of Dft | |
| 2/2/72 | Filed Opinion # 38226 by Judge Croake The motion is denied So Ordered CroakeJ( mailed Notice) | |
| 10.72 | Filed Pltff Note of Issue and statement of readiness. | |
| 2-25-73 | Filed Pltff's Notice to take Oral Deposition of Ronald Kassin,5/17/73,10:00 A.M. | |
| 8-23-73 | Filed notice of minute clerk.- | |
| 9-9-73 | Non juxy trial began. | |
| 9-10-73 | Non jury trial contd. and concluded. Decision reserved. Post-trial briefs shall be filed by noon on Nov. 30,1973.Reply briefs,if any by Dec. 7,1973. | |
| 10-5-73 | Filed transcript of record of proceedings, dated Oct-9,10, 1973 | |
| 10-10-73 | PRE-TRIAL CONFERENCE before Carter J | |
| 10-23-74 | Filed Opinion #40812.....constituting the court's findings of fact and conclusions of law. The defendant's liability for reasonable collection expenses and counsel fees in the amount of $32,065.44 has been established. The evidence indicates that defendant committed himself to guarantee up to $150,000. plus interest, for any debts which plaintiff incurred on behalf of Interocean. Judgment is therefore awarded against defendant in the sum of $32,065.44 for expenses and counsel fees to date and judgment for $150,000. plus interest at 6% from the date of the filing of this action. So ordered. -- Carter, J. m/n | |
| 10-29-74 | Filed JUDGMENT AND ORDER #74,530 that plaintiff have judgment against the defendant in the amount of $32,065.44 for expenses and counsel fees to date, and for the amount of $150,000. plus interest at 6% from date of the filing of this action. -- Clerk. | |
| 11- 1-74 | Filed pltf's affdvt. and notice of motion to amend judgment and include more interest. - ret. 7-12-74 | |
| 11- 3-74 | Filed defendants notice of appeal to the USCA for the 2nd Circuit from final judgment in favor of pltf. - copy mailed to Winkler, Gottlieb Taylor & Howard, Esqs. | |
| 11-19-74 | Filed pltf's notice to take depositions of Morton L. Annis on 8-5-74 | |
| 11-19-74 | Filed notice of engagement of trial counsel for plaintiff. | |
| 12-11-74 | Filed Endorsement -- Pltff moves to amend the court's judgment to award interest at the rate of 7 1/2% from 11/1/69 to 8/31/72 etc. . . . Pltff's agreement with defts. provided for payment of guarantee entered into when due on pltff's demand. Pltff. demanded full compliance with the guarantee on 9/22/70. Pltff. urges that prejudgment interest should begin to run from a date prior to 9/22/70. The facts, however, do not justify that claim. Prior to 9/22/70, although there had been default in payment by Intercontinental Wines & Spirits, Ltd. and pltff. had asserted deft's liability, it negotiated with deft. Further, and its action, at least until 9/22/70 is not consonant with its assertion that it had invoked the guarantee's terms and conditions. On 9/22/70 however, it clearly and unequivocally invoked the agreement. Interest, therefore is awarded at 7 1/2% from 9/22/70 to 8/31/72 and thereafter at 6%-So ordered Carter,J | |

| DATE | PROCEEDINGS | Date Ord. Judgment |
|---|---|---|
| | Filed JUDGMENT #74,784 and order that plaintiff Weitnauer Trading Co., Ltd. have judgment against the defendant Morton L. Annis in the sum of $150,000.00 together with interest at the rate of 7-1/2% per annum from Sep-22-70 to Aug-31-72 and thereafter at the rate of 6% per annum, together with costs and disbursements to the date of the decision amounting in the sum of $32,065.44. -- Carter, J. | |
| | Filed copy of notice of appeal to the USCA for the 2nd Cir. from final judgment in favor of plff. and against deft. -- copy to Miller Gottlieb Taylor & Howard, Esqs. | |
| | Filed (in Court) reply affidavit of William P. Callahan on behalf of plffs. in reply to opposing affdvt. of Morton L. Annis. | |
| | Filed plff's reply memorandum in support of motion to amend judgment. | |
| | Filed plff's. trial memorandum. | |
| | Filed stipulation designating papers to be transmitted to U.S.C.A. | |
| | Filed notice that the record on appeal has been certified and transmitted to the USCA on 11-20-72 | |

CIVIL DOCKET
UNITED STATES DISTRICT COURT

3A

Jury demand date:

71 CIV. 782

C. Form No. 106 Rev.

| TITLE OF CASE | ATTORNEYS |
|---|---|
| WEINHAUER TRADING COMPANY LTD.<br><br>AGAINST.<br><br>MORTON L. ARMS | For plaintiff:<br>WIKLER, GOTTLIEB TAYLOR & HOWARD.<br>64 Wall St.<br>N.Y.C., N.Y. 10005<br>trial counsel: Lankenau Kovner Bickfo<br>& Beer, 30 Rockefeller Plaza, NYC 10<br><br>For defendant:<br>Newman, Rich, Krinsly & Katz<br>99 Park Ave. NY 10016 867-7200 |

| STATISTICAL RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|---|---|---|---|---|---|---|
| J.S. 5 mailed Σ | Clerk | | 1-22 | Rubel | 15 | |
| | | | 2-26-71 | Rubel | | 15 |
| J.S. 6 mailed √ | Marshal | | 3/5/71 | Rubel | 5 | |
| | | | 4/15/71 | Rubel | | 5 |
| Basis of Action: | Docket fee | | 4/15/71 | Rubel | 15 | |
| BREACH OF CONTRACT. | Witness fees | | | | | |
| $150,000 | | | | | | |
| Action arose at: | Depositions | | | | | |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

4A

| | |
|---|---|
| WEITNAUER TRADING COMPANY LTD., Plaintiff, - against - MORTON L. ANNIS, Defendant. | File No. 71 Civ. 782 COMPLAINT |

Plaintiff, by Wikler Gottlieb Taylor & Howard, its attorneys, for its claim for relief, upon information and belief alleges:

1. Plaintiff, WEITNAUER TRADING COMPANY LTD., is a corporation formed and existing under the laws of Switzerland, and having its principal place of business in Basel, Switzerland. Defendant, MORTON L. ANNIS, is a Vice-President of General Cigar Company, Incorporated and maintains a business address at 605 Third Avenue, New York, New York, and is a resident of the State of Florida. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand dollars. Jurisdiction and venue of this action is conferred upon this Court by the provisions of Sections 1332 and 1391 of Title 28, United States Code.

2. Plaintiff is engaged in the sale and distribution of wines and liquors throughout various countries and the United States.

3. Heretofore and on or about September 30, 1969, plaintiff entered into an agreement whereby plaintiff would

act as an exclusive purchasing agent for Inter/Continental Wine and Spirits, Ltd., 3000 Marcus Avenue, Lake Success, New York ("Inter/Continental") for various alcoholic products produced in Europe and the United Kingdom and shipped by plaintiff to Inter/Continental for sale in the United States. Plaintiff was to be paid a commission on goods shipped and said commissions were to be added to the invoices sent to Inter/Continental.

4. Theretofore and on or about September 30, 1969, in consideration of and as an inducement for plaintiff extending credit to Inter/Continental, the defendant MORTON L. ANNIS made, executed and delivered to plaintiff WEITNAUER TRADING COMPANY, LTD., an agreement in writing dated September 30, 1969, a true copy of which is hereto annexed and marked Exhibit "A", wherein and whereby MORTON L. ANNIS unconditionally guaranteed to pay plaintiff the sum of One Hundred Thousand ($100,000.00) Dollars with interest thereon and reasonable counsel fees, without deduction for any claim, setoff or counterclaim, for all existing and future indebtedness of Inter/Continental to plaintiff for goods and credits extended by plaintiff to Inter/Continental.

5. Heretofore and on or about January 19, 1970, in consideration of and as an inducement to plaintiff to extend further credits and shipments of goods purchased, to Inter/Continental, defendant MORTON L. ANNIS made, executed and delivered to plaintiff WEITNAUER TRADING COMPANY, LTD., an agreement in writing dated January 19, 1970, a true copy of which is hereto annexed and marked Exhibit "B", wherein and whereby MORTON L. ANNIS and plaintiff mutually agreed that the unconditional guaranty dated September 30, 1969 (Exhibit "A") be amended as to paragraph "1" to provide that defendant's limit of guarantee be increased to $150,000 from $100,000.

all other items to remain the same.

6A

6. Defendant MORTON L. ANNIS made and executed the aforesaid guaranties in the State of New York.

7. The guaranty, by its terms, in particular paragraph "8" thereof, provides that: "This guaranty shall be governed by the laws of the State of New York."

8. Thereafter, plaintiff purchased and shipped to Inter/Continental various shipments of liquor products and rendered invoices therewith in the total sum of $174,496.20, no part of which has been paid by Inter/Continental, except a nominal sum, leaving a balance due and owing in excess of $150,000.00. A true copy of said invoices is hereto annexed and marked Exhibit "C".

9. The said Inter/Continental has wholly failed and refused to pay for the said goods, although payment thereof was duly demanded.

10. On or about December 9, 1970 and on numerous occasions thereafter, plaintiff duly notified defendant of Inter/Continental's default in paying its indebtedness to plaintiff and demanded of the defendant that he pay the said sum of $150,000.00, and defendant has failed and refused to make such payment as guaranteed, and no part thereof has been paid.

11. By reason of the foregoing, plaintiff has sustained damage in excess of $150,000.00 and expects to incur attorneys' fees herein.

WHEREFORE, plaintiff demands judgment against defendant in the sum of $150,000.00, together with reasonable attorneys' fees, interest and costs of this action.

WIKLER GOTTLIEB TAYLOR & HOWARD

By /s/ HARRY A. GOTTLIEB
A Member of the Firm
Attorneys for Plaintiff
64 Wall Street
New York, New York 10005
422-1080

inter/continental
WINE AND SPIRITS LTD.

September 30, 1969

I-1 8A

Weitnauer Trading Co. Ltd.
4001 Basel
Switzerland

Gentlemen:

This will confirm the understanding between us:

1. As an inducement to you to grant credit or assume a credit risk from time to time in respect of sales of goods made by you to Inter/Continental Wine & Spirits Ltd. ("Inter/Continental") or in respect of any other type of transaction by which you become the creditor of Inter/Continental, the undersigned shall pay to you all amounts up to One Hundred Thousand ($100,000) Dollars (which shall be the limit of the undersigned's liability under this agreement) forthwith when due, or upon demand thereafter, with interest, and without deduction for any claim or setoff or counterclaim of Inter/Continental the full amount of all obligations or indebtednesses due to you from Inter/Continental, together with all expenses of collection and reasonable counsel fees incurred by you by reason of the default of Inter/Continental.

2. This is a continuing guaranty and shall be revocable only as to transactions entered into by you subsequent to the receipt by one of your officers of three (3) months prior notice of termination sent by the undersigned by registered mail.

3. The undersigned waives notice of acceptance hereof and notice of orders, sales and deliveries to Inter/Continental and of the amounts and terms thereof and of all defaults or disputes with Inter/Continental and of the settlement or adjustment of such defaults or disputes.

3000 MARCUS AVENUE, LAKE SUCCESS, N.Y. 11040

SA

4. The undersigned, without affecting his liability hereunder in any respect, consents to and waives notice of all changes of terms, the withdrawal or extension of credit or time to pay, the release of the whole or any part of the indebtedness, the settlement or compromise of differences, the acceptance of notes, trade acceptances or any other form of obligation for Inter/Continental, and the demand, protest and notice of protest of such instruments or their endorsements.

5. If a petition for bankruptcy or an application for any other relief under any provisions of the Bankruptcy Act is filed by or against Inter/Continental, or a receiver is appointed for the assets or affairs of Inter/Continental, or in the event that Inter/Continental shall make a general assignment for the benefit of creditors, or in the event of its insolvency, all sums due you by Inter/Continental and not yet matured shall forthwith mature and forthwith be payable by the undersigned on demand.

6. The obligation of the undersigned is primary and unconditional and covers all existing and future indebtedness of Inter/Continental to you. This obligation shall be enforceable before or after proceeding against Inter/Continental and shall be effective regardless of the solvency or insolvency of Inter/Continental at any time, the extension or modification of the indebtedness of Inter/Continental by operation of law, or the subsequent reorganization, merger or consolidation of Inter/Continental or any other change in the composition, nature, personnel or location of Inter/Continental.

7. Nothing herein contained shall be construed as an obligation on your part to sell goods or extend credit to Inter/Continental or as an obligation to continue to sell goods or extend credit. Your records showing the account between you and Inter/Continental shall be admissible in evidence in any action of proceeding involving this guaranty and such records shall be prima facie proof of the items therein set forth.

8. This guaranty shall be governed by the laws of the State of New York.

Weitnauer Trading Co, Ltd. September 30, 1969

**10A**

9. This guaranty shall be binding upon the undersigned, his legal representatives and assigns and shall inure to your benefit and to the benefit of your successors and assigns.

Yours very truly,

Ronald Kassin
President

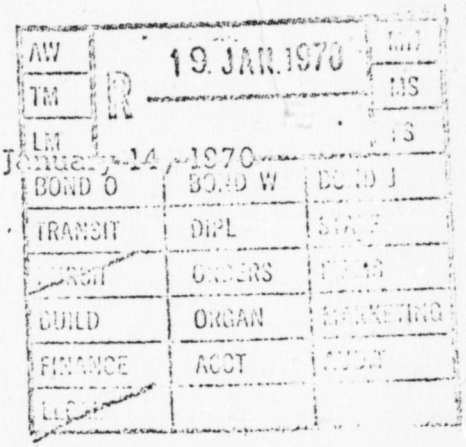
Morton L. Annis, Sr.

Witness:

Harold Kassin

Inter/ continental

WINE AND SPIRITS LTD.




11A

January 14, 1970

Weitnauer Trading Co., Ltd.
4001 Basel
Switzerland

Gentlemen:

This will confirm the understanding between us that our agreement dated September 30, 1969 is amended as follows:

Paragraph 1 - is amended to a limit of $150,000 from the present limit of $100,000, all other items remain the same.

INTER/CONTINENTAL
WINE AND SPIRITS, LTD.

Ronald Kassin, President

Morton Annis

Leonard Fellman

AUER TRADING COMPANY
LIMITED

/_ 12A

INTER/ CONTINENTAL
Wine + Spirits Ltd
LAKE SUCCES

TOLENKONTO

№ 32565

2

| ollzahl | Datum | Beleg-Nr. | Text | Beleg-Datum | Valuta | Soll | Haben | Satz | SALDO |
|---|---|---|---|---|---|---|---|---|---|
| | NOV 28'69FA | .171 | C/B | | 20.11 | 346.50 · | | | |
| 097.18 | NOV 28'69FA | .231 | C | 27,11 | 17.02 | 20,180.40 · | | .00 | 140,097.18 o |
| ,962.92 | DEZ 30'69UN | S | .B.C. | | 22.12 | | 4,134.26 | .00 | 135,962.92 o |
| ,142.92 | DEZ 31'69FA | .051 | C | | 31.12 | 3,180.00 · | | .00 | 139,142.92 o |
| 842.92 | DEZ 31'69DN | 4 | INS DEB. 2 SEMESTER | | 31.12 | 700.00 · | | .00 | 139,842.92 o |
| | MRZ 25'70FA | .291 | C/P | 6,03 | 23.03 | 10,098.00 | | | |
| | MRZ 25'70FA | .331 | C | 18,03 | 06.03 | 2,383.96 | | | |
| | MRZ 25'70FA | .321 | C | 18,03 | 18.03 | 2,805.00 | | | |
| ,541.88 | MRZ 25'70FA | .301 | C | 3,03 | 06.05 | 2,412.00 | | .00 | 157,541.88 o |
| 8350.98 | APR 22'70CH | C | HECK IC 3 | | 6.04 | | 4,990.90 | .00 | 152,550.98 o |
| | APR 30'70FA | .361 | C | 13,04 | 05.07 | 920.50 | | | |
| | APR 30'70FA | .371 | C | | 14.04 | 1,507.50 | | | |
| | APR 30'70FA | .421 | C | | 22.04 | 782.00 | | | |
| .158.13 | APR 30'70FA | .424 | 1/31 IC REST | | 22.04 | 4,397.15 | | .00 | 160,158.13 o |
| ,158.73 | APR 30'70CN | .424 | 1/31 IC MEHRBETRAG | | 22.04 | .60 | | .00 | 160,158.73 o |
| 118.73 | JUN 10'70FA | .451 | C | | 2.06 | 5,960.00 | | .00 | 154,198.73 o |
| ,618.73 | JUN 30'70UN | 74.68 | S.B.C. | | 24.06 | | 1,500.00 | .00 | 162,618.73 o |
| ,258.73 | JUN 30'70FA | .461 | C | | 11.06 | 2,640.00 | | .00 | 165,258.73 o |
| | Übertrag | | | | 31.08 | 93,337.47 | | | 137 496.20 |

UER TRADING COMPANY
LIMITED

INTER/ CONTINENTAL
WINE + Spirits Ltd
L a k e Succes

13A

DEBITOLENKONTO

Konto № 32565

1

| Ablizahl | Datum | Beleg-Nr. | Text | Beleg-Datum | Valuta | Soll | H/Ab | Umsatz | SALDO |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | .00 | 202.71 ° |
| 202.71 | AUG 30'69FA | .01 | IC | | 14.08 | 202.71 | | | |
| | [illegible] | .02 | IC PARTS | | 16.10 | 16,934.90 | | | |
| | [illegible] | .05 | IC | | 16.11 | 5,300.30 | | | |
| | [illegible] | .07 | IC | | 16.10 | 5,300.00 | | | |
| | [illegible] | .12 | IC | 15,10 | 30.10 | 1,000.00 | | .00 | 31,606.81 ° |
| | [illegible] | .13 | IC | 15,10 | 30.10 | 1,000.00 | | .00 | 31,609.41 ° |
| [illegible] | [illegible] | .06 | IC NEUBETRAG | | 10.11 | .60 | | | |
| [illegible] | CKT 31'69FA | .03 | IC PART. | 28,10 | 07.11 | 3,496.40 | | | |
| | CKT 31'69FA | .04 | IC | 15,10 | 31.12 | 2,502.50 | | | |
| | CKT 31'69FA | .08 | IC | 20,10 | 20.10 | 20.15 | | | |
| | CKT 31'69FA | .09 | IC | 20,10 | 15.01 | 9,317.50 | | .00 | 47,024.26 ° |
| | CKT 31'69FA | .10 | IC | 22,10 | 10.01 | 78.30 | | | |
| 47,024.26 | CKT 31'69FA | .16 | IC | 31,10 | 16.11 | 10,711.80 | | | |
| | CKT 31'69FA | .18 | IC | 16,10 | 31.12 | 1,787.50 | | | |
| | CKT 31'69FA | .21 | IC | 27,10 | 17.10 | 10,301.50 | | .00 | 80,742.01 ° |
| | CKT 31'69FA | .22 | IC | 27,10 | 17.10 | 10,916.95 | | | |
| 80,742.01 | NOV 25'69FA | .15 | IC | 5,11 | 30.11 | 5,253.60 | | | |
| | NOV 25'69FA | .17 | IC/A | | 20.11 | 2,533.90 | | | |
| | NOV 25'69FA | .17 | IC/C | | 20.11 | 843.50 | | | |
| | NOV 25'69FA | .17 | IC/D | | 20.11 | 304.00 | | | |
| | NOV 25'69FA | .17 | IC/E | | 20.11 | 962.50 | | | |
| | NOV 25'69FA | .19 | IC | 10,11 | 30.12 | 8,605.50 | | | |
| | NOV 25'69FA | .20 | IC | 10,11 | 30.12 | 8,605.50 | | | |
| | NOV 25'69FA | .24 | IC | 14,11 | 17.11 | 75.70 | | | |
| | NOV 25'69FA | .25 | IC | 18,11 | 31.01 | 1,158.00 | | | |
| | NOV 25'69FA | .26 | IC | 18,11 | 31.01 | 2,106.00 | | .00 | 111,927.61 ° |
| | NOV 25'69FA | .27 | IC | | 5.11 | 37.32 | | | |
| 111,927.61 | NOV 25'69FA | .02 | IC REST | 27,11 | 17.00 | 3,444.00 | | | |
| | [illegible] | .03 | IC REST | | 26.11 | 1,494.50 | | | |
| | [illegible] | .2 | IC | 26,11 | 30.12 | 224.17 | | | |
| | [illegible] | .2 | IC | 2 11 | 27.01 | 3,150.00 | | | |

SUMMONS IN A CIVIL ACTION

APRIL 31, 1971

CIV. 1a (2-64)
(Formerly D. C. Form No. 45a Rev. (6-49))

# United States District Court

13A-1

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 71 CIV. 782

WEITNAUER TRADING COMPANY LTD.,

Plaintiff

v.

MORTON L. ANNIS

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

WIKLER GOTTLIEB TAYLOR & HOWARD

plaintiff's attorney whose address is 64 Wall Street,
New York, New York 10005

an answer to the complaint which is herewith served upon you, within days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN LIVINGSTON

Clerk of Court.

Deputy Clerk.

Date: February 23, 1971

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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14A

WEITNAUER TRADING COMPANY LTD.,

Plaintiff,

File No. 71 Civ. 782

-against-

MORTON L. ANNIS,

ANSWER

Defendant.

----------X

Defendant, Morton L. Annis, for his answer to the plaintiff's complaint:

1. Admits the allegations of paragraph "1" except denies so much of the allegations thereof as alleges that this Court has jurisdiction of this action.

2. Denies the allegations of paragraph "3" except admits the making of the alleged agreement and respectfully refers to the said agreement for the terms thereof.

3. Denies the allegations of paragraphs "4", "5", "6", "10" and "11".

FOR A FIRST AFFIRMATIVE DEFENSE, SET-OFF AND COUNTERCLAIM, DEFENDANT ALLEGES:

4. Heretofore and on about July 2, 1969, plaintiff purchased from Inter/Continental Wine and Spirits, Ltd. convertible bonds for a pur-

chase price of $40,000.00 and plaintiff issued its credit note for the said amount of $40,000.00 for which Inter/Continental Wine and Spirits, Ltd became entitled to a credit and off-set against the claim in plaintiff's complaint and defendant is entitled to a credit for such amount of $40,000 00.

4-15A

FOR A SECOND AFFIRMATIVE DEFENSE, SET-OFF AND COUNTERCLAIM, DEFENDANT ALLEGES:

5. Plaintiff shipped merchandise to Inter/Continental Wine and Spirits, Ltd. and charged the said firm for the same notwithstanding that the said merchandise was unsalable in the United States, excessively priced and said Inter/Continental Wine and Spirits, Ltd. has rejected the same and tendered the return of the said merchandise to the plaintiff which said merchandise has a value of $60,000.00 and is now being held for the account of the plaintiff.

FOR A THIRD AFFIRMATIVE DEFENSE, SET-OFF AND COUNTERCLAIM, DEFENDANT ALLEGES:

6. Heretofore, plaintiff and defendant entered into an agreement whereby plaintiff was to purchase spirits in various European countries and the defendant was to market the said spirits in the United States upon terms whereby the balance of net profit or net loss after all expenses were to be shared equally by plaintiff and defendant.

7. On information and belief, the plaintiff's profit on such balance amounted to 14% for which the plaintiff has failed to account to the defendant.

8. On information and belief, the plaintiff has derived substantial profits from the said sales and has wholly failed to pay to the defendant

9. By reason of the foregoing, there is due from plaintiff to defendant monies in an amount for which plaintiff has failed to account for which defendant demands an accounting and payment.

WHEREFORE, defendant demands judgment dismissing plaintiff's complaint and for an accounting on defendant's Third Counterclaim and that plaintiff be required to pay the defendant all amounts determined by said accounting to be due to the defendant from the plaintiff, together with the costs and disbursements of this action.

NEWMAN, RICH, KRINSLY, POSES & KATZ

By _____
A Member of the Firm
Attorneys for Defendant
Office and P. O. Address
99 Park Avenue
New York, N. Y. 10016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



| | |
|---|---|
| - - - - - - - - - - - - - - - - - - - - - - - - X | File No. 71 CIV. 782 |
| WEITNAUER TRADING COMPANY LTD., : | |
| Plaintiff, : | |
| -against- : | REPLY TO COUNTERCLAIM |
| MORTON ANNIS, : | |
| Defendant. : | |
| - - - - - - - - - - - - - - - - - - - - - - - - X | |

Plaintiff, WEITNAUER TRADING COMPANY LTD. for its reply to the counterclaims of the defendant set forth in paragraphs 4 to 9 inclusive, of the Answer, alleges:

1. Replying to paragraph 4 of said Answer, plaintiff denys the allegations thereof. Moreover, this counterclaim fails to state a claim against plaintiff upon which relief can be granted as (a) any set-off, claim or counterclaim in favor of INTER/CONTINENTAL WINE & SPIRITS LTD. cannot be availed of by defendant by reason of his written guaranty dated September 30th, 1969, wherein defendant expressly waived said defense, and (b)notwithstanding said waiver, defendant lacks standing to assert said defense.

2. Replying to paragraph 5 of said Answer, plaintiff denies the allegations thereof. Moreover, this counterclaim fails to state a claim against plaintiff upon which relief can be granted as (a) any set-off, claim or counterclaim in favor of INTER/CONTINENTAL WINE & SPIRITS LTD. cannot be availed of by defendant by reason of his written guaranty dated September 30th,

1969, wherein defendant expressly waived said defense, and (b) notwithstanding said waiver, defendant lacks standing to assert said defense.

3. Replying to paragraphs 6 to 9 inclusive of said Answer, plaintiff denies the allegations of each and every paragraph thereof.

WHEREFORE, plaintiff demands that defendant's counterclaims be dismissed and that it be awarded judgment as prayed for in the complaint.

WIKLER GOTTLIEB TAYLOR & HOWARD

By _____

A member of the firm
Attorneys for Plaintiff
Office & P. O. Address
40 Wall Street
New York, New York 10005
422-1080

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WEITNAUER TRADING COMPANY, LTD.,

Plaintiff,

- v -

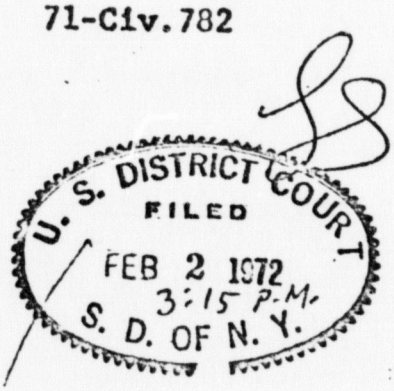
MORTON L. ANNIS,

Defendant.

----------x

19A

71-Civ.782

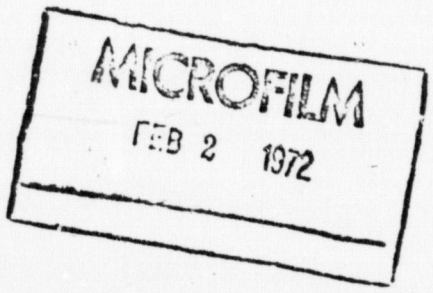



#38226

APPEARANCES:

WIKLER GOTTLIEB TAYLOR & HOWARD
Attorneys for Plaintiff
40 Wall Street
New York, New York 10005
By: Harry A. Gottlieb, Esq.
William P. Callahan, Esq.
Of Counsel

NEWMAN, BLUE, RICH, KRINSLY & KATZ
Attorneys for Defendant
99 Park Avenue
New York, New York 10016
By: Norton I. Katz, Esq.
Of Counsel




CROAKE, D. J.

This is a motion for partial summary judgment in an action on a guarantee. The action grew out of a business arrangement for the importation and sale of various European alcoholic beverages in the United States. The

arrangement also provided a method for assuring payment of the indebtedness of the United States purchaser; it is this provision which is sued upon.

Plaintiff Weitnauer Trading Company, Ltd., a Swiss corporation, alleges that it contracted to be purchasing agent for Inter/Continental Wine and Spirits, Ltd. ("Intercontinental"), a recently-formed United States liquor distributor, in return for a commission on all goods shipped on credit to Intercontinental. Plaintiff further alleges that on September 30, 1969, as an inducement for its extension of credit, the defendant, Morton L. Annis, Sr., a holder of ten percent of the stock of Intercontinental, and whose son owned another ten percent, would, along with Ronald Kassin, guarantee payment of its debts to plaintiff in amounts up to a maximum of $100,000, plus interest, costs, and attorneys' fees, and without any deduction for counterclaims or setoffs. This guarantee is alleged to have been amended by letter dated January 14, 1970, and signed by the defendant, by Kassin, and by Leonard Fellman, to increase their maximum liability thereunder to $150,000. Kassin was at one time the president of Intercontinental, and was succeeded by Fellman.

Plaintiff claims that it shipped goods invoiced at a total amount of $174,496.20, and that only a nominal portion of this amount has been paid. Intercontinental is alleged to have defaulted on payment of the balance, and to have filed a petition under Chapter XI of the Bankruptcy Act (Docket No. 71-B-794 (E.D.N.Y.)).

Defendant was deposed by plaintiff on June 11, 1971. At that time he stated, referring to the signature, "Morton Annis," on the original guarantee, "It is a similar signature to mine but I do not recall signing the document." (Deposition, p. 6.) He therefore neither admits nor denies the validity of that signature. (See his affidavit, ¶ 6). He does, however, unqualifiedly deny having signed the amendment.

The basic defense on this action is forgery. In this regard defendant notes that a criminal complaint has been lodged with the local district attorney charging Kassin, whose present whereabouts are apparently unknown (Deposition, p. 26), with forgery in connection with another guarantee not herein involved. (Deposition, pp. 24-25.) Furthermore, there are references in the exhibits to the moving and reply papers and at the deposition to alleged embezzlements by

Mr. Kassin. (See Exhibit 5 to the deposition, which is Exhibit K to the moving papers; see also Exhibit B to the reply papers.)

Defendant claims that he had originally proposed to plaintiff that it obtain security for its extension of credit through retention of title to the goods in an American bonded warehouse until actual sale by Intercontinental to the local distributor or retailer. (Deposition, pp. 10-12.) The goods would therefore remain under plaintiff's control, and could be returned to Switzerland without payment of customs duties in the event of a breach by Intercontinental. Furthermore, if Intercontinental were paid cash, that cash could be transferred on delivery of the goods by plaintiff; if not, plaintiff could at least rely upon the credit, not of Intercontinental, but of its purchasers.

It appears to be defendant's contention that he had believed that the transaction would be structured in that fashion, while Kassin had meanwhile misrepresented to plaintiff that it would be structured with a personal guarantee by defendant, among others, of Intercontinental's capability to pay. Kassin's apparent motivation was desire

to do business with plaintiff notwithstanding plaintiff's conclusion that "the direct import system does not work." (Ex.G.)

Plaintiff responds with various documents in support of its contention that defendant has raised what are mere sham issues. Among these documents is a letter on defendant's stationery, and apparently signed by him (See Deposition, pp. 10, et seq.), to an officer of plaintiff, dated January 8, 1969 (Ex. 8; K), which contains an implied admission of the validity of a guarantee. A previous letter, dated September 22, 1969 (Ex. 3; F), similarly addressed, also supports the inference of defendant's recognition of a guarantee. However, a third letter, dated February 19, 1970 (Ex.4; K), disclaims any signature of a guarantee to plaintiff, and infers the existence of a defence of forgery. It is possible, on the other hand, to read this letter as referring exclusively to the amended guarantee of $150,000. In any event, defendant now claims that those letters, which admit the existence of "a guarantee," relate to a bank guarantee unrelated to those presently before this Court. This is entirely possible, since the record in its present state

is devoid of description of the circumstances surrounding the signing of the guarantees.

In these circumstances, the question of whether defendant or Kassin signed the guarantee is clearly a factual issue. Issue was joined as to this question by defendant's denial of the material allegations in the complaint. While a mere refusal to admit might not suffice to controvert the plaintiff's contention of validity, it is sufficient when taken together with the other new matter presented in opposition to this motion to defeat it. The burden of proof remains with defendant and must be discharged, if at all, at trial. Cf. Fed. R. Civ. P. 8(d); Fleck v. O'Brien, 19 Misc. 399, 43 N.Y.S. 854 (Sup. Ct. Kings Cty., 1897).

In other words, defendant by asserting failure of memory has removed himself as a potential witness on the question of who signed the guarantee. His claimed lack of memory of a relatively recent event of considerable monetary significance may strain the credulity of the trier of fact, but on the present record, it may not be utilized to denigrate the value of the circumstantial evidence indicating forgery.

In any event, forgery is not the only defense to this motion. Various other arguments of more or less persuasive effect have been advanced, as to which plaintiff has replied, "In reading the answering affidavit one is reminded of Sir Walter Scott's famous phrase from Marmion: 'O what a tangled web we weave,when first we practice to deceive!'" Defendant claims that certain credits were owing Intercontinental for sales made by it in Europe, or as part of an alleged agreement providing for investment by plaintiff of interim capital in the form of purchase of $40,000 worth of debentures of Intercontinental. These claims are advanced despite the prohibition in the guarantee against assertion of Intercontinental's offsets by the guarantor. Defendant also contends that he possesses personal offsets, which would presumably survive the prohibition in the guarantee against assertion of Intercontinental's offsets. One such claim is for alleged commissions payable; this despite a previous disclaimer of having done any selling.

The only other defense which need be noted in any detail is that the goods when delivered proved to be substandard or overpriced and, hence, unsalable. Defendant

asserts that, as a result, some of the merchandise is being held for plaintiff's account by Intercontinental, which has denied liability for payment in the Chapter XI proceedings; some other merchandise was allegedly sold at auction in California for only $35,000, instead of its list price of $110,000, because of its poor quality. The argument is that plaintiff breached its contract with Intercontinental by the nonconforming delivery, and that, as a result, Intercontinental is in fact not indebted to plaintiff, nor defendant as well.

The absence of various material facts from the record in this regard makes it impossible to evaluate this defense. Neither party has given evidence relative to acceptance or rejection, N.Y.U.C.C. §§ 2-206, 2-606, 2-602 (McKinney 1964); relative to possible acceptance with or without reservation of rights, § 1-207, See also 2-207; relative to the effect of warranties, etc. Nor, for that matter, has there been any extensive briefing of the question of whether breach of a contract, which would be a defense, is included in the guarantee's prohibition of assertion of ". . . counterclaims."

Accordingly, the motion is denied. Plaintiff's alternative request is for what would amount to a pre-trial order specifying the controverted issues, and, except in so far as this memorandum may serve as such, is denied as premature.

SO ORDERED.

Dated: New York, N. Y.
January 31, 1972

Thomas F. Croake

THOMAS F. CROAKE
U. S. D. J.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

28A

| | | |
|---|---|---|
| WEITNAUER TRADING COMPANY, LTD., | : | |
| Plaintiff, | : | Civil Action No. 71-782 |
| -against- | : | |
| MORTON L. ANNIS, | : | NOTE OF ISSUE and STATEMENT OF READINESS |
| Defendant. | : | |

Note of Issue for Civil Trial
Term - Calendar No. 4.

WIKLER GOTTLIEB TAYLOR & HOWARD, attorneys for plaintiff, pursuant to Rule 5 of the Calendar Rules of this court, certify as follows:

1. WEITNAUER TRADING COMPANY, LTD., plaintiff, vs. MORTON L. ANNIS, defendant.

2. Docket No. 71-782 (Civil).

3. WIKLER GOTTLIEB TAYLOR & HOWARD, attorneys for plaintiff, 40 Wall Street, New York, New York 10005. Telephone No. 422-1080.

NEWMAN, RICH, KRINSLY, POSES & KATZ, attorneys for defendant, 99 Park Avenue, New York, New York 10016. Telephone No. 867-7200.

4. The nature of the action: Action on two (2) written guaranties and judgment for amount found due.

5. Issue has actually been joined on behalf of all parties to the action.

6. The last pleading, the answer of defendant, was served on April 28, 1971, and filed.

7. No jury has been demanded.

8. The parties have had a reasonable opportunity to take and complete necessary depositions and other discovery proceedings.

9. The information required under Rule 5(a)(9) of the Calendar Rules of this court is not applicable in this action.

10. The case is in all respects ready for trial.

11. The plaintiff has unsuccessfully approached the defendant as to the possibility of a settlement.

12. There are no other causes resting upon the same matter of right or defense.

Dated: New York, New York
March , 1972

WIKLER GOTTLIEB TAYLOR & HOWARD

By _____
A Member of the Firm

Attorneys for Plaintiff
40 Wall Street
New York, New York 10005

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

30A

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WEITNAUER TRADING COMPANY, LTD., :

Plaintiff, :

-against- : 71 Civ. 782

MORTIN L. ANNIS, :

Defendant. :

----------x

October 9, 1973
10:00 a.m.

BEFORE: Hon. ROBERT L. CARTER, D.J.

APPEARANCES:

VICTOR A. KOVNER, ESQ.
and
JOHN C. LANKENAU, ESQ.,
Attorneys for plaintiff

NORTON KATZ, ESQ.
and
LESLIE CORWIN, ESQ.,
Attorneys for defendant

MR. KOVNER: Ready for the plaintiff.

MR. KATZ: Defendant is ready. I would ask two indulgences of the Court by reason of a recent illness, one, that I be permitted to remain seated while addressing the Court or a witness; and the second is that if possible, and I realize this may be an imposition on the Court's time, if possible, we adjourn somewhere between 3:00 and 3:30 because that's the time when, first of all, medically I'm supposed to do so, and secondly, when my energies flag.

If that's not possible, I will continue. If it is consistent with the Court's time I would like to carry it out.

THE COURT: Mr. Katz, I will try to cooperate as much as I can, but that's far too early for me to adjourn. What I will do is attempt to give you recesses. My plan is to--I will do this for you: I won't keep you here beyond five o'clock.

All right, let's proceed.

MR. KOVNER: Your Honor, at the outset I would like to offer a short trial memorandum to the Court in connection with this matter. It was served on our adversary this morning. I think both Mr. Katz and I will ask at the conclusion of the trial for leave to submit post-trial memoranda.

There is a great deal of correspondence over a

period of years between the parties, Your Honor, and Mr. Katz's office and I have worked out an understanding with respect to the genuiness of most of the correspondence. The suit is, as you know, on two guarantees which are in dispute. There are a few other documents that are in dispute, but we intend to offer an aggregate of 39 exhibits. And with the leave of the Court and with the consent of my adversary I would like at the outset to ask if we can simply introduce the indisputed ones at the outset of the case and simply ask the witnesses as they are called, questions in connection with, I would say, 30 to 35 of the 38 exhibits. I think that might be an effective way of expediting the trial.

THE COURT: Is that agreeable to you?

MR. KATZ: The consent as to genuineness and of course not to relevance or materiality. But as to genuineness I certainly think we ought to mark them now all as a group numerically and make a record of the markings and then we can refer to them by number during the course of the trial.

THE COURT: All right.

MR. KOVNER: Your Honor, I have earlier this morning affixed the tags to these and I will--would you like me to call them off as I number them and introduce them for genuineness and if there is any dispute, I will so identify them and not offer them at this time.

I have numbered them, I might add, chronol just for convenience so there will be a few missing as to the disputed documents. The first is an agre entitled "Notes" dated October 1, '68, between the dant, Mr. Annis and the plaintiff.

The second is a letter from the defendant, to Mr. Fritz Meier.

MR. KATZ: Just hold on for one moment.

MR. CORWIN: This is an agreement?

MR. KOVNER: It was October 16th. I ass is no dispute as to it. You will recall the documen referring to.

MR. CORWIN: No, I don't know.

(Plaintiff's Exhibits 1 and 2, marked for i fication.)

MR. KATZ: There is no dispute as to its gen ness. It's just that when we were marking them--

MR. KOVNER: I want to make clear on the rec that Exhibit 1 for identification is dated October 16,

MR. KATZ: May I see that again?

MR. KOVNER: Yes.

(Document handed to Mr. Katz by Mr. Kovner.)

MR. KATZ: There appears to be a difference bet the on you have marked and the one that was annexed to our

papers. Unless you have a different copy of our papers. Because there is a time and place line and a signature line on the one you're offering which does not appear on our copy of the moving papers.

MR. KOVNER: That's all I have. This is our

(Discussion off the record.)

MR. KOVNER: Withdraw Exhibit 1 for the time

Exhibit 2 for identification is a letter from the defendant, Mortin Annis, to Mr. Fritz Meier, who in the court, October 25, '68.

MR. KATZ: As to Exhibit 3 there is no agre at the moment and we will try to work it out at lunc

MR. KOVNER: Exhibit 4 for identification, a letter from the defendant, Mortin Annis, to Mr. Fritz dated April 7, 1969. And there is an attachment to it.

MR.CORWIN: That's Exhibit 4?

MR. KOVNER: Right.

Exhibit 5, a letter from defendant Mortin An to Mr. Meier dated June 9, 1969.

(Defendant's Exhibits 4 and 5 are marked for tification.)

MR. KOVNER: 6, I believe, is in controversy, so we will hold it. That's the 6/16/69 letter.

MR. CORWIN: That's correct.

MR. KOVNER: 7 is a carbon of the Plaintiff's letter to Mr. Annis dated July 3, 1969, our carbon.

MR. CORWIN: July 3rd. We are going to have to see that.

(Discussion off the record.)

MR. CORWIN: All right.

MR. KOVNER: That's 7.

Exhibit 8 for identification is a letter from defendant Nortin Annis to Mr. Adolph Weitnauer dated 1969.

Exhibit 9 is a letter from defendant Nortin to Mr. H. Thomann of the plaintiff corporation, dated August 20, 1969.

Exhibit 10, letter of defendant, Nortin Annis to Mr. Meier dated September 22, 1969, and for that there is attachment.

Exhibit 11 through 15 will not be introduced at this time.

Exhibit 16 is a copy of a letter from the plaintiff to Mr. Kassin, dated October 8, 1969.

(Discussion off the record.)

MR. KOVNER: We are holding 16.

The next is 18, which is a letter from plaintiff to defendant dated November 4, 1969.

MR. KATZ: You're numbering that how?

MR. KOVNER: 18.

19 is a letter from plaintiff to defendant dated January 13, 1970.

22 is a copy of a letter from plaintiff to Mr. Kassin dated February 5, 1970.

24 is a copy of a letter from plaintiff to Mr. Meier dated March 31, 1970.

MR. CORWIN: Plaintiff to Mr. Meier?

MR. KOVNER: I'm sorry. Correct that. That's from defendant to Mr. Meier dated March 31, 1970.

25 is a letter from defendant to Adolph Weitnauer dated June 19, 1970.

28 is a letter from plaintiff to defendant dated September 22, 1970 with an attachment.

29 is a letter from plaintiff to defendant dated October 6, 1970.

30 is a letter from defendant to Mr. Thomann dated October 13, 1970.

31 is a letter from defendant to Mr. Thomann dated November 16, 1970.

32 is a letter from plaintiff to defendant dated November 18, 1970.

33 is a letter from plaintiff to defendant dated

December 9, 1970. - 37A

34 is a letter from defendant to Adolph Weitnauer dated December 16, 1970.

35 is a letter from plaintiff to defendant dated December 31, 1970.

36 is a letter from defendant to Harry Gottlieb dated January 18, 1971. That was 36. Did I say 35?

MR. KATZ: You said 36.

MR. KOVNER: 37 is a letter from defendant to Mr. Thomann and dated January 18, 1971.

38 is a letter from defendant to Adolph Weitnauer dated January 19, 1971.

Lastly, 39 is a letter from defendant to Mr. Thomann dated February 19, 1971.

Now, Your Honor, I would like to call Mr. Fritz Meier to the stand.

F R I T Z M E I E R, called as a witness on behalf of the plaintiff, after being duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KOVNER:

Q Mr. Meier, would you state your address and place of employment?

A My address is--I live in Gellertstrasse 18 Basle,

Switzerland and I am working with Weitnauer Trading Company, Ltd. in Basle.

Q What is your position at Weitnauer?

A At Weitnauer Trading I am Assistant Vice President in charge of purchase.

Q How long have you served in that capacity?

A I am with the company since 1958.

Q In that capacity?

A In that capacity, yes, sir. I have not changed.

Q What are your responsibilities as vice president in charge of purchasing?

A That is difficult to explain because Weitnauer is a company working in various countries in Europe. Either directly or associated companies. When you have a position in the head officer, you have the same position in associated firms in a capacity as a coordinator. So, in other words, I am finally responsible for negotiations with all suppliers of the Weitnauer group in so far as exclusive contracts are concerned, sales rights, terms, terms of shipment. Then the actual work is also to supervise the stocks, place the orders, get the shipment rolling, make the calculations, sign the invoices for payment.

Another additional activity is the trading between Weitnauer and associated companies, buying and selling.

Q What products does the Weitnauer firm handle principally?

A Weitnauer handles as a first line manufactured tobacco products. As a second line, spirits. The third line is perfume, cosmetics, textiles, food, technical items.

Q When you say handle, what is the business of Weitnauer? Does it manufacture these products?

A We do not manufacture. We buy and sell in various capacities, either as importer, wholesaler or even in certain countries with retailers.

Q Approximately what portion of Weitnauer's business involves wines and liquors and approximately what is the dollar volume per annum of that business?

A The portion of the business which is attributable to recurrent wine I would guess is around 20%. And the purchasing volume will be between eight and ten million dollars annually.

Q Mr. Meier, when did youfirst meet the defendant, Mortin Annis, and what were the circumstances surrounding that meeting?

A I met first Mr. Mortin Annis when he came to see us in May, 1968 in his executive position or officer position of General Cigar, one of the biggest cigar companies in the United States, where he was in charge of developing the export

business. We had longstanding relations with General Cigars and he was announced by personal friends which we have within this company and also from person friends outside of General Cigar, so we knew Mr. Mortin Annis was a personality in this business.

Q Did there come a time in 1968 when Mr. Annis discussed at a meeting you attended the possibility that he might form a liquor and wine distribution company in the United States?

A This was in July when Mr. Mortin Annis came the second time to Basle. He mentioned that he intended to buy for a company, Charro Roga, wines and liquors for the United States and to set up a business imprt and wholesale of liquor and wine into the United States.

MR. KATZ: May we have the year fixed? It was fixed as July, but the year was not fixed.

THE WITNESS: '68.

THE COURT: Do I understand both of these meetings were in Switzerland?

THE WITNESS: Yes, Your Honor.

THE COURT: Where?

THE WITNESS: In our offices in Basle, Switzerland.

Q Did there come a time in 1968 when an agreement was prepared between the defendant, Mr. Annis, and Weitnauer?

A Yes. On October 16, '68, Mr. Nortin Annis visited us the third time, and based on all negotiations which have been made beforehand, an agreement was set up.

MR. KOVNER: I would like to offer for identification as Plaintiff's Exhibits 1, a two-page document entitled "Notes" dated October 16, 1968.

(Plaintiff's Exhibit 1, marked for identification.)

MR. KATZ: May it please the Court--

THE COURT: Mr. Katz, you asked for permission not to get on your feet and I assume I gave it to you.

MR. KATZ: Thank you, Your Honor. With reference to this document, this is the first document that was in dispute. Because the one that was referred to in the notice to produce did not bear the time endorsement or the signature lines.

May I have a voir dire on those items?

THE COURT: Yes, of course.

VOIR DIRE EXAMINATION

BY MR. KATZ:

Q Mr. Meier, when this document was prepared, was it prepared in any earlier draft? Were there earlier drafts of it?

A Possibly. I couldn't tell you. This is the final note which was signed.

Q And were was this signed?

A This was signed in Basle.

Q By Mr. Annis?

A By Mr. Annis, yes.

Q You observed him signing it?

A Yes.

Q And there appears to be a signature which bears under it the name S. Meniconi. Who is Mr. Meniconi?

A Mr. Meniconi was at that time the head of our sales department. In other words, my colleague from sales department.

Q Your signature is typed as well as in handwri Did you affix your signature at the same time as Mr. A

A Yes, I did.

MR. KATZ: I have no objection to the introduct of this exhibit.

THE COURT: All right. It will be received.

(Plaintiff's Exhibit 1, received in evidence.)

DIRECT EXAMINATION (Cont'd)

BY MR. KOVNER:

Q You say--I just want to pin the time of the execution. Were all three persons who signed that agreement, did they sign it at the same place?

A Yes.

Q Did you see Mr. Annis sign that agreement?

A I saw Mr. Annis signing this.

Q At the time that agreement was signed did you have any discussions with Mr. Annis concerning the relationship that was reflected in that agreement?

A We had numerous discussions, letters, and telephone correspondence and samples between Switzerland and Jacksonville.

Q I'm asking now on the occasion in October when that was signed, did you discuss with Mr. Annis the relationship between Weitnauer and Mr. Annis in connection with this transaction?

A Oh, yes.

Q What was the subject of that discussion or discussions to the best of your recollection?

A The subject was joint creation of trademarks, agreements regarding the purchase activity of Weitnauer, and the handling of accounts.

Q What was the role of Weitnauer to be in connection with this agreement?

A Weitnauer, there was no doubt about it, was a purchasing office or agent. What I would say in English, the expression is "confirming house."

Q For--

A In England.

Q Weitnauer was to be a confirming house or purchasing agent?

A For the company which was to import liquor and sell in the United States.

Q After the execution of this agreement what did you do in connection as it relates to the subject of this agreement?

A Already before, after the July meeting and we had samples of all kinds of spirits which we found able for the United States sent to Mr. Martin Annis.

Q Did you have occasion to correspond with Mr. in connection with your activities?

A There was a lot of correspondence at that time.

Q I show you Exhibit 2. There is a reference to Curtis Company.

A Yes.

Q What was the Curtis Company that Mr. Annis was writing about?

A The Curtis Company is an associated company of one of the biggest British brewery groups, Allied Breweries, where Mr. Annis had personal friends and wanted their products to be imported into the United States.

Q What did he want you to do?

A He wanted to have my opinion on the products which were submitted.

Q Did there come a time when Mr. Annis informed you that a company was to be formed to handle the--withdraw that question.

Did there come a time when you learned of the name of the company which was to handle the distribution of the liquor in the United States?

A Yes. This time came in early '69, I think in February, where the name of Intercontinental Wine and Spirits came in first. Or April, February, or March.

MR. KOVNER: Your Honor, my partner reminds me that I had not actually offered Exhibit 2 into evidence. I would like first to ask this:

Q Have you see this document before?

A Yes.

Q Did you receive it in the ordinary course of your business?

A I did.

MR. KOVNER: Your Honor, I would like to offer Exhibit 2 into evidence.

MR. KATZ: No objection.

(Plaintiff's Exhibit 2, received in evidence.)

MR. KATZ: Your Honor, please, the discussion has to

do with the fact I have not seen this letter before and I am being asked whether I would object to its admission. I ask leave to take a moment to look at it?

MR. KOVNER: Your Honor, may I just explain, for some reason this is the one letter which I could not locate the original of, or that we had it. I do have a clear Xerox. I think--

THE COURT: What is the subject of the exhibit?

MR. KOVNER: What is that, Your Honor?

THE COURT: What exhibit?

MR. KOVNER: IT's Exhibit 3.

The genuineness was not previously conceded because we did not have the original.

(Pause.)

MR. KATZ: No objection.

THE COURT: All right.

(Plaintiff's Exhibit 3, received in evidence.)

Q Mr. Meier, do you recall receiving that letter?

A Yes.

Q Was that the first time that you learned of the existence of an entity called Intercontinental Wine and Spirits Ltd.?

A Yes.

Q At this time what were your activities in connection

with the--

A Pardon me?

Q What were your activities in connection with the October '68 agreement that was previously admitted? What were you doing?

A Making offers, sending samples, propositions for the import in the United States, and contacting various manufacturers. The ones we had already and new ones.

Q I would like you to look at Plaintiff's Exhibit 4 for identification. Have you seen that before?

A This is a letter which I received on April 7, '69, dated April 7th.

Q Was that received in the ordinary course or your correspondence with the defendant?

A Yes.

Q Was this the first time that you learned of the persons who were to operate the new company?

A Yes, this was the first time I heard of the names, Mr. Kassin--

MR. KATZ: Your Honor, unless the Exhibit goes into evidence, it's only here for identification and its contents are being inquired about and I would object.

MR. KOVNER: I would offer into evidence Plaintiff's Exhibit 4 for identification.

(Pause.)

MR. KATZ: No objection.

(Plaintiff's Exhibit 4, received in evidence.)

Q Was the receipt of this letter the first time you learned of the persons who were being engaged to operate Intercontinental Wine and Spirits?

A Yes.

Q Mr. Meier, I show you Plaintiff's Exhibit 5 for identification and ask you if you have seen that document before?

A This is a letter addressed to me dated June 9, 1969. I have seen that before.

What is that document?

Q I'm sorry, did you answer the previous question?

THE COURT: Yes.

A Yes. I said this was a letter I received.

Q You received this letter in the ordinary course of correspondence with the defendant, Mr. Annis?

A Yes.

MR. KOVNER: I would like to offer Plaintiff's Exhibit 5 into evidence.

As to the ones that are admitted, I would like to offer them to you as they come in.

(Handing.)

MR. KATZ: There is no objection.

THE COURT: All right.

(Plaintiff's Exhibit 5 is received in evidence.)

Q Mr. Meier, in Plaintiff's Exhibit 5 there is a reference to a publication and a conversion ratio at an inside price. Do you know what Mr. Annis was referring to by those terms?

A Yes. They're with negotiations between Mr. Annis and Weitnauer, that Weitnauer would buy convertible bonds in the Intercontinental Company if and when issued.

Q Do you know when those discussions had initially taken place?

A These negotiations went over April, May, to June, 1969.

Q When it refers to an inside price, do you know what the defendant was referring to?

A It's difficult because it was never a clear status. There was a conversion ratio but there were never any final or definitive information regarding the stock to be issued.

Q As to the term "inside price," do you know what that meant?

A The price on which the convertible would have to be changed into common or preferred, common or preferred stocks.

Q When he refers to a publication "sometime this fall,"

do you know what he was referring to?

A That was meant that the company, Intercontinental, would go public.

Q Mr. Meier, I would like you to look at Plaintiff's Exhibit 6 for identification and tell me if you have seen the document before and where you have seen it.

A This is a letter addressed to me dated June 16, 1969, which I have received at that time.

Q Did you receive this letter in the ordinary course of correspondence with the defendant?

A Yes.

MR. KOVNER: I would like to offer in evidence Plaintiff's Exhibit 6 for identification.

MR. KATZ: This is one that is in controversy, Your Honor.

THE COURT: All right.

(Pause.)

MR. KATZ: May I have a voir dire on this, Your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KATZ:

Q Did you see Mr. Annis affix his signature to this letter?

A Certainly not.

Q Do you have any knowledge whether the signature that appears on this letter is or is not in fact his signature?

A When it's on his letterhead, it's his signature.

Q Outside of the fact it's on his letterhead, do you have any knowledge as to whether or not the signature or the writing at the bottom of this letter is the signature or writing of Mr. Annis?

A When I receive a letter from Mr. Annis on his letterhead I must assume he has signed it.

Q Outside of that assumption do you have any knowledge as to whether he did or did not sign?

A No.

Q Now, you say you received it about June 16, 1969.

A You have the date on the stamp, which gives the date entrance of the correspondence. It's legible but with some difficulty.

Q And there appears at the bottom of that letter in handwriting some words and the initials "T.M." Can you tell us who affixed that handwriting and those initials?

A Can I have a look at that?

Q Yes.

(Document handed to witness.)

MR. KOVNER: Referring to this section down here. (Indicating.)

A This is Mr. Thomann's handwriting. He is a member of the board of our company, and says: "Please discuss the answer with me."

Q And are the initials T.M. those of Mr. Thomann or that he customarily uses?

A Had at that time.

Q You mean it's changed?

A It's changed. All references on the letters changed at the given time within the Weitnauer Company.

Q But my question is at the time of the initials T.M. were affixed, was that the signature that Mr. Thomann ordinarily used?

A Not the signature, but the abbreviation which was normal within Weitnauer Trading.

Q When you say, therefore, that this letter was received in the ordinary course of the business of Weitnauer Trading Company, Ltd., it was not received by you, was it?

A It was received by me because--

Q Mr. Thomann gave it to you?

MR. KOVNER: I object, Your Honor. He was answering your first question.

MR. KATZ: I'm sorry. I'll withdraw it.

Q Will you complete your answer. Was it received by you?

A It was received by me.

Q From whom?

A From the mail desk.

Q From whom?

A From the mail desk.

Q It was not received from Mr. Thomann?

A No.

Q So that it went directly from the mail desk to you?

A To me, yes.

Q And then what was the occasion or circumstances under which Mr. Thomann affixed the words "Please discuss the answer with me."

A The letter was put internally into circulation. According to the quadratic things which you have there, you see all people have seen this letter and when it came to Mr. Thomann, he said, "Disscuss it with me," and it went back to me and we discussed the answer.

Q Did you see it at the mail desk at any time before Mr. Thomann did?

A No. The mail desk handed it over to me as the consignee or as being addressed to me.

Q And you read it first?

A I read it first, yes.

Q What did you do with it?

A Then I put it into circulation because in that case some correspondence was important for circulation for the knowledge of people and some had not.

MR. KATZ: I object to the introduction of this letter on the grounds that it is not binding on the defendant since the signature has not been identified. The only proof is that it was received by the plaintiff in the ordinary course of business but there is no evidence that it was received from the defendant.

MR. KOVNER: Very briefly, Your Honor, I think the document speaks for itself. It's on the letterhead of the defendant. Part of a series of undisputedly correspondence between the parties.The testimony is that it was received in the ordinary course of business. And it was addressed to Mr. Meier who was then corresponding with him. I think a more than adequate foundation has been laid to admit this.

MR. KATZ: I don't think there is any significance on the fact that it was on Mr. Annis' letterhead in view of what I believe will not be undisputed evidence that his letterhead was freely used in the office of Intercontinental and was present there.

THE COURT: Objection overruled.

(Plaintiff's Exhibit 6 is received in evidence.)

DIRECT EXAMINATION (Cont'd)

BY MR. KOVNER:

Q In Plaintiff's Exhibit 6 there is a statement from the author of the letter that "as far as your organization is concerned you will still have conversion rights on the inside price, and I will write you more about this as soon as I can get to New York and sit down and discuss this matter."

Do you know what he was referring to by conversion rights on the inside price?

A That is referring to the convertible bond issue.

Q At this time had there been agreement on the precise form of convertible bonds?

MR. KATZ: I'm going to object to this question and move to strike both questions and answers as to the previous question, and ask that I have a continuing objection upon the ground that although the exhibit is in evidence, when Mr. Kovner refers to "he" he is obviously referring to the defendant.

There is no proof that that letter was in fact issued or written by the defendant.

MR. KOVNER: Very briefly, my question referred to the author of the letter and I was asking what Mr. Meier's understanding was at that time about conversion rights on the inside

price.

MR. KATZ: By the author of the letter, whoever it might be.

MR. KOVNER: I think the letter speak for itself. We already had the testimony on our knowledge of the author of the letter.

THE COURT: I think the objection is overruled.

I understand your objection, Mr. Katz, but Mr. Kovner did frame the question as to the author of the letter. Proceed.

Q Let me rephrase the question, Mr. Meier. What was your understanding of the term of the phrase "you will still have conversion rights on the inside price, will write to you more about this," as written by the author of this letter?

A This was the conversion of convertible bonds into stock at a given price.

Q Had the price been agreed upon? Had the terms of conversion been agreed upon?at that time?

MR. KATZ: Objection as to form.

THE COURT: Objection as to form, I think that's correct. You were about to rephrase your question, weren't you?

MR. KOVNER: I will rephrase the question.

Q Was there any understanding at that time as to the terms of convertibility between the parties?

MR. KATZ: I have the same objection.

THE COURT: Well, I'm going to sustain the objection chiefly because I'm not sure that the record is clear on, one, whether there was such an agreement. Has such an agreement been so far set forth in any of these documents?

MR. KOVNER: There hasn't, Your Honor. There is simply very vague discussions about some convertible bonds, although no agreement was ever reached, which is what we intend to prove.

THE COURT: I think you had better establish that before you ask him the question.

Q You testified previously, Mr. Meier, that there had been some discussions relating to convertible bonds?

A Yes.

Q Which were conducted while the defendant was involved. What was--were you present at those discussions?

A At any discussions with the defendant about convertible bonds? We are at June 16, 1969?

Q I'm now asking you about earlier discussions prior to June.

A There were earlier discussions, yes.

Q What was said at those discussions?

MR. KATZ: The question was, was he present.

THE COURT: The question has not been answered.

Q Were you present at the discussions?

A Yes, I was present.

Q What was said by the defendant, Mr. Annis, at those discussions which you were present?

A It was said that Weitnauer would be able to buy convertible stocks of Intercontinental, convertible bonds of Intercontinental if and when it should.

Q Had the structure of Intercontinental been outlined at those discussions?

A The captain structure was not clear or has not been outlined.

Q Had an understanding been reached with respect to the convertible bonds by the time you received Plaintiff's Exhibit 6?

A At that time an understanding was reached, yes.

Q And what was the scope of it?

A The scope of it was that Weitnauer Trading would acquire 40,000 convertible bonds.

Q Had the precise terms of the convertible bonds been agreed upon or discussed?

MR. KATZ: I object to the use of the words "agreed upon."

Q Had the terms of the convertible bonds been discussed in terms of did you know, for instance, what portion of the capitalization of the company you would acquire on conversion, if you did convert?

A No, this we did not know.

Q Had the inside--

MR. KATZ: If Your Honor please, I'm going to object and move to strike. It was a dual question. The question was, had the terms been discussed and did you know what the ratio was. I think that calls for a dual answer in its present form.

THE COURT: That is right.

MR. KOVNER: Could you read back the question and the answe r that was given?

(Whereupon, the record was read back by the reporter.)

Q You did not know what portion of the company was to be obtained pursuant--

A No.

Q Let me finish the question, Mr. Meier, --pursuant to converstion of these bonds which were offered to when and if issued, is that correct?

A Yes.

Q Did there ever come atime when you learned what

portion of the company Weitnauer was to be offered pursuant to this discussion of convertible bonds?

A Not to my knowledge.

Q Had Mr. Annis, up until June 16, 1969, ever told you what portion of the company Weitnauer was going to be able to acquire?

A No.

Q Mr. Meier, I'd like you to look at Plaintiff's Exhibit 7 for identification and tell me if you have seen that before.

A This is a letter which I wrote on the company's paper on July 3rd to Mr. Martin Annis.

Q How do you know you wrote it?

A There are my abbreviations and the abbreviations of my secretary affixed on top of this letter.

Q What are your abbreviations?

A At that time it was M.E.

Q Is that an abbreviation in the same nature as T.M. was for Mr. Thomann?

A Yes.

MR. KOVNER: I'd like to offer Plaintiff's Exhibit 7 in evidence.

MR. CORWIN: I think when you first introduced this you said July 3, 1970. Am I correct?

(Discussion held off the record.)

THE COURT: Gentlemen, you have exchanged these exhibits and I am getting somewhat impatient because I think you're wasting more time than you need waste on it. I assume you knew the exhibits would be in dispute and I assume you would be prepared and ready to make your objections.

MR. KATZ: We were asked only for concessions as to genuineness, which we have given.

THE COURT: This is one knew was in dispute?

MR. KOVNER: This one I believe they knew was in dispute. A couple were before.

MR. KATZ: At any rate, there is no objection. The reason for the difficulty we just had was on the notice to produce the date was given as July 3, 1970, rather than '69 and we had some difficulty.

Q Mr. Meier, there is a reference to sending a credit note to Intercontinental in Plaintiff's Exhibit 7. What actions did you take in connection with these discussions in connection with the possible purchase of convertible bonds?

A We opened a credit for Intercontinental of $40,000. In favor of Intercontinental.

Q How did you document that?

A We documented that by sending a credit note to Mr. Mortin Annis for being remitted to Intercontinental. Saying

that we would like to receive the convertible bonds.

MR. KATZ: I'm going to object to the witness' last interjection as not being the best evidence. If they sent a credit note, then the best evidence is the credit note.

MR. KOVNER: Could you define precisely your objection to the answer, because I'm not clear. I think the answer was responsive to the question.

MR. KATZ: The witness interjected that he had sent to Mr. Annis a credit note, and I object to that on the ground that the best evidence--that's not the best evidence of what was sent; that the characterization of it as a credit note is a characterization and the best evidence is what was sent.

MR. KOVNER: Do you have a copy of the credit memo?

MR. KATZ: I could put my hands on it in a moment but I'm sure you have a copy.

MR. KOVNER: Why don't we go forward and we'll deal with the credit note afterwards since I think there is no dispute with respect to it.

Q Now, during the late summer of 1969 did you have occasion to work out procedures by which liquor and wines would be selected and negotiated and orders would be made involving Weitnauer and Intercontinental?

A Yes, there were a lot of discussions during that time. Mr. Kassin and Mr. Radisch came to Basle and briefly

the outline was given. We worked closely together. Intercontinental people visited, had contact with the manufacturers regarding the quality, the price, the quantity of the products. If an order is to come about, the order will be placed through Weitnauer as purchasing agent and shipped directly to Intercontinental.

THE COURT: Excuse me, are you offering this in evidence?

MR. KOVNER: I think it was marked. If it was not marked, it was my oversight. It was offered and no objection was made.

THE COURT: It's still marked for identification.

THE CLERK: That's correct, Your Honor.

(Plaintiff's Exhibit 7 is received in evidence.)

THE COURT: All right, proceed.

Q Now, in connection with these orders of liquor by Intercontinental, who would issue the initial order and who would receive it?

A Intercontinental would issue initial order, and I would receive it.

Q Would the supplier of the liquor receive it?

A The supplier would also receive it, either directly or through me as intermediator.

Q And would the issuance of--did someone at

Intercontinental agree upon the price with the supplier prior to the issuance of the order?

A Absolutely. All prices were always very clear.

MR. KATZ: I object to everything after "absolutely." The question would somebody in Intercontinental agree with the supplier of the material, and the answer was "absolutely," all prices were very clearly established." I object to everything after the word "absolutely."

THE COURT: Objection sustained. I didn't understand the last phrase anyhow.

Q When and order would be issued you testified that a copy would be sent to you and a copy to the supplier. Would the supplier then ship the order?

A No, the supplier wouldn't ship because at that time nothing was clear regarding the financing.

Q What requirements did the suppliers have in order to ship the order?

A All suppliers were not willing to ship to an unknown and practically non-existent company on an open account basis.

Q Did you work out a procedure as to how those orders were to be filled?

A The original understanding was that Weitnauer would not have to go into financing of orders. But then when these

questions came up, we referred to Mr. Mortin Annis.

THE COURT: I'm not sure I'm understanding this.

Mr. Kovner asked you would the suppliers ship on the receipt of orders, on, I gather, a copy of the order. I gather that the answer is no. But the next qestion I gather also is what procedure, if any, would you be involved in to have a shipment supplied. I'm not clear on that yet.

Q Did the suppliers require that they receive a guarantee or a confirmation of the order from your company?

A Yes.

Q Had you done business for many years with the suppliers?

A Not with all of them, with some of them.

Q Were you well known in your rope so that your guarantee was accepted as opposed to Intercontinental?

A It was accepted everywhere.

THE COURT: In other words, as I understand it, your testimony is that Intercontinental would order, you would get a copy of the order and a copy would go to the supplier. The suppliers in general would only fill the order and ship whatever was ordered to Intercontinental on your guarantee. Is that correct?

THE WITNESS: Yes, Your Honor. May I add that a supplier was free to ship if--

THE COURT: I'm not asking that. All I'm asking is--I know he is free to ship. I'm just asking a question so I can get some understanding of this. The plaintiff would guarantee to the supplier and the supplier would then ship the goods. In general that was it?

THE WITNESS: Yes, Your Honor.

Q When this procedure was carried out and you ultimately did guarantee for the payment of orders to suppliers did Weitnauer virtually pay the suppliers directly?

MR. KATZ: Objection as assume a fact not in evidence; namely, that there was any ultimate guarantee.

THE COURT: I think that is correct.

Q Did there come a time when Weitnauer in fact guaranteed or assumed the responsibility for the payment of orders made by Intercontinental?

A Yes.

Q And in those cases did there--did Weitnauer thereafter pay for those orders?

A They paid for all orders shipped.

Q And when you so guaranteed and paid, did Weitnauer invoice Intercontinental for the amount?

A Yes.

Q Did they add on a commission?

A Yes, they added on the purchasing commission.

Q And what was the commission?

A The commission was on the invoices 10% with fluctuations, to 8% on low-priced items.

Q But the basic commission was 10%?

A Basic commission was 10%.

Q Of that 10% was there an understanding as to who was entitled to that 10% commission?

MR. KATZ: I'm objecting, was there an understanding, as embodying a conclusion.

THE COURT: Yes.

Q Were there discussions between you and the defendant and representatives of Intercontinental with respect to who would have an interest in that 10% commission?

MR. KATZ: That's objected to on the ground that it includes the defendant and representatives of Intercontinental and is not binding as to the defendant, except as the discussions were with the defendant.

THE COURT: Well, I think that's right, but I also-- Mr. Kovner, I think you may develop what the discussions were and what the agreement was, if there was any agreement.

Q Were there discussions between the plaintiff and the defendant in connection with that 10% commission?

A In respect of 6% commission, yes.

Q Well, in so far as it was part of the 10% commission--

A Yes.

Q (Continuing)--were with those discussions?

A The discussions were joint agreement.

THE COURT: What?

THE WITNESS: A joint agreement. Weitnauer to increase the net purchase price or on a cost plus basis by 6%. This 6% to be accumulated in the accounts. Both parties were eligible to deduct from these amounts the expenses they had in connection with development of the business, and the rest would have been split 50-50.

Q Was that in accordance with the original October, '68 agreement?

A Absolutely in accordance with this agreement.

Q But that accounts for 6% or a division of 6% after expenses?

A Yes.

Q What about the other 4%?

A The other 4% were resulting from negotiations with Intercontinental, people asked me to add even more than 4%, to which I objected, because I thought it was too much. These were credited to Intercontinental in our accounts to be used for them for whatever purpose they liked, advertising material printed, and so on, and so on.

Q In other words, of the 10% commission you kept a

separate account as to 4% which was held for the benefit of Intercontinental for expenses. Is that correct?

A Yes, correct.

Q Now, in the late summer of 1969 had Intercontinental commenced the forwarding of orders to suppliers in Europe and did you receive copies of those orders?

A Yes. There were quite a number of orders placed.

Q Do you know approximately the dollar volume of the orders by the end of August or September?

A $100,000, even more.

Q What steps did you take in connection with those orders?

A We wanted to have a solution regarding payment of these orders.

Q And what did you do?

A We contacted Mr. Mortin Annis.

Q And what did you say?

A We must have a guarantee for the commitments in which we go in so far as Intercontinental is concerned.

Q Did you describe to them what kind of guarantee you required?

A We required his personal guarantee.

Q Did you require--

MR. KATZ: I object to the answer as not being

responsive.

THE COURT: Well, if I understood the question correctly--read it back. Maybe I didn't understand it.

(Whereupon, the pending question was read back by the reporter.)

THE COURT: Objection overruled.

Q Did you require any evidence of Mr. Annis' personal assets in connection with sucha personal guarantee?

A Yes, we asked for his personal financial statement.

MR. KOVNER: Your Honor, I have just missed two letters. I'm not going to ask very many questions about them, but I want to introduce them. They are somewhat out of sequence. I jumped ahead of myself briefly. If there is no objection, I will ask Mr. Meier to identify both Exhibits 8 and 9 for identification, ask him if he's seen them before and where he has seen them.

A These are letters which are addressed to Mr. Adolph Weitnauer and Mr. Thomann in Weitnauer Trading and which we have received in July and August, '69.

Q And where did you get them?

A I got them at our office in Basle.

Q And where were they kept?

A They were kept in the files.

MR. KOVNER: I would like to offer Plaintiff's

Exhibits 8 and 9 in evidence.

MR. KATZ: There is no objection.

THE COURT: All right.

(Plaintiff's Exhibits 8 and 9 are received in evidence.)

Q Mr. Meier, I see in Exhibit 9 Mr. Annis mentions that Mr. Thomann is coming to the United States.

A Yes.

Q Did Mr. Thomann in fact make a trip to the United States?

A Yes, he did.

Q He did. When was that?

A That was the end of August, September of '69.

Q In September, 1969, did you speak to the defendant by telephone?

A Yes, I did.

Q Did you speak about the personal guarantee?

A I spoke about a personal guarantee.

Q What did you say to him?

THE COURT: When was this again?

THE WITNESS: That was in September of '69.

Q What did you say to him?

A I said that we require his personal guarantee for $100,000, guaranteed by him. And in order to submit it to my

board I should have his personal statement, financial statement.

Q What did he say to you?

A Mr. Annis agreed.

Q I ask you if you have seen Plaintiff's Exhibit 10 before.

A Yes, this is Mr. Annis' letter with enclosed personal statement, which I have received in New York.

Q You say you received this in New York?

A Yes.

Q It appears to be addressed to you in Switzerland.

A I know, but the covering envelope was addressed to the New York Hilton were I stayed and it came the first day I when I came here.

Q Do you know why it was not mailed to Switzerland?

A I think the time was very short, Mr. Weitnauer got the copy involved and by that time it was so short, the time, that it was mailed directly to my hotel.

MR. KOVNER: I would like to offer Plaintiff's Exhibit 10 in evidence.

MR. KATZ: There's no problem on this, no objection.

THE COURT: All right.

(Plaintiff's Exhibit 10, received in evidence.)

Q Did you examine the financial statement at that time?

A We did, yes.

Q With other officers of Weitnauer who examined it?

A On the telephone with other officers. Mr. Thomann was in New York.

MR. KATZ: May I have the last answer read?

(Whereupon, the last answer was read back by the reporter.)

Q Did there come a time when you took steps to prepare the form of guarantee, of personal guarantee which you were seeking?

A Yes. When being in New York I went to see our lawyer, Mr. Harry Gottlieb, on Wall Street, and asked him to draft a personal guarantee for this case.

Q And did he do so?

A He did.

THE COURT: Gentlemen, we will take a short recess. We will recess until 11:40.

(Whereupon, a recess was taken.)

THE COURT: All right, proceed.

Q Mr. Meier, I show you a copy of Plaintiff's Exhibit 11 for identification and ask you if you have seen it before?

A This is the guarantee drafted by Mr. Harry Gottlieb's office, for which I asked.

MR. KOVNER: I would like to offer this.

MR. KATZ: You say you were not introducing 11 through 15.

MR. KOVNER: You hadn't agreed to the genuineness of 11 through 15 at the outset, but I'm going to be offering most of 11 through 15. Those are not correspondence between the parties. These are other documents.

MR. KATZ: Go ahead.

Q Now, what did you do with this document?

A I took the document--

MR. KATZ: I object. I would like it marked for identification first.

MR. KOVNER: It has been marked as Exhibit 11.

Q After you received this from Mr. Gottlieb, did you meet with the defendant, Mortin Annis?

MR. KATZ: That's objected to as assuming a fact not in evidence and referring to its contents. This exhibit is not one that we have either agreed upon or been shown, I don't think.

Q In late September did you meet with Mr. Mortin Annis?

A I met with Mr. Mortin Annis on September 24th or 25th, in the evening at a dinner at the 21 Club in New York.

Q Who was present?

A Present at that dinner was Mr. Mortin Annis, Sr.,

Mr. Mortin Annis, Jr., Mr. Kassin, Mr. Radisch, a Mr. Feldman, and possibly Mr. Kaiser.

Q At that meeting did you discuss the subject of the personal guarantee which you had testified previously you had discussed by telephone?

MR. KATZ: I object to that as being very leading, putting words in the witness' mouth.

THE COURT: Well, it's very leading, but there is no jury here.

Proceed.

A Nearing the end of the dinner I took the guarantee draft out of my jacket and presented it for signature or for further discussion.

Q Is this a copy of the document?

A This is a copy of the document I so presented.

MR. KOVNER: This is Plaintiff's Exhibit 11, for identification and I would like to offer it in evidence.

(Pause.)

MR. KATZ: May I have a voir dire on this?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KATZ:

Q Mr. Meier, can you fix exactly the date of this meeting at the 21 Club when the incident you have just

described occurred?

A It must be either the 24th or 25th of September. I assume it was the 24th.

Q What year?

A 1969.

Q And is there any manner, anything that refreshes your recollection or that makes you certain that it was either the 24th or 25th?

A Yes. I have a letter in the files which I wrote in the hotel room to Mr. Kassin which is dated the 25th and refers to the previous evening.

Q You don't have that here?

A Yes.

Q It's in the courtroom?

A No, it's not put forward for evidence, I don't think.

Q But it's in New York?

A Yes.

Q And at the afternoon session or perhaps tomorrow you can get that out of your hotel room?

A Yes.

Q Will you do so?

A Yes. In fact, I think I have the letter here, if I am permitted to look for it.

MR. KOVNER: We can go over that this afternoon.

Q You say this was a session at the 21 Club at which you were there for entertainment purposes?

A For what?

Q You were there with Mr. Kassin and Mr. Annis at any rate. Is that correct?

A I wouldn't say that's correct, for entertainment. I was here to discuss with Intercontinental.

Q Yes. I have confused you and I'm sorry.

Is it correct to say that you were at the 21 Club with at least present were Mr. Annis and Mr. Kassin. Is that correct?

A And the people I mentioned. The only person I'm not quite sure whether he was there was Mr. Keiser. But Mr. Mortin Annis, Sr., Jr., Kassin, Feldman and Radisch I'm sure of.

Q Referring to this paper, Exhibit 11, which is now being offered, you say you took it out of your pocket?

A Out of the jacket, yes.

MR. KOVNER: I object. He testified he took a copy out of his pocket. This was a copy of what he delivered, not that he took that document out of the pocket.

Q Is that correct, are you saying that Exhibit 11 is not the document that you took out of your pocket but that was a

copy of this document?

A I had probably played--I had probably had this made at Gottlieb's office in various copies. I had a number of copies with me because it was meant to be signed by Mr. Mortin Annis this evening because this was the only occasion I met him in New York.

Q Now, what I'm asking is whether this paper, Exhibit 11, was one of the papers that you had in your pocket.

A Physically the one which you have in your hand?

Q Yes.

A What can I tell you?

Q Well, you can answer that yes or no. Would you tell me yes or no.

A Yes, I know. But physically after four yeats--it was that guarantee, I can tell you. But whether it was physically that paper which you have I can't tell. But it looks like the original, so I had the original, certainly.

Q Well, it's important to us here to know whether the paper that you handed to Mr. Annis was identical with this Exhibit 11, and therefore I am now asking you how many copies of Exhibit 11 did you have?

A I can't honestly answer this question because I don't know after four years how many copies I had.

Q Can you tell me how many copies of Exhibit 11 you took

with you to the 21 Club that night?

A Certainly minimum two, because it was meant to be signed and one, of course, for Mr. Annis. Minimum two.

Q And can you tell us whether of the two copies that you had with you, you ever compared the language of any of those two copies with the language that appears in Exhibit 11?

A Yes.

Q Did you read the language through and make sure that everything that was in the papers that you had with you for signature were the same--contained the same language as in Exhibit 11?

A Can you repeat this, please?

(Whereupon, the pending question was read back by the reporter.)

A What are you going to do after four years? It was the guarantee.

Q I'm sorry, you will have to speak louder.

A It was the guarantee presented to Mr. Annis. It was a draft of the guarantee.

Q I can't hear the answer.

THE COURT: It was a draft of the guarantee presented to Mr. Annis.

MR. KATZ: I'm objecting then and move to strike on the ground it is not responsive.

THE COURT: The simple answer, as far as I can understand it, Mr. Katz, is that Mr. Meier is either not able to remember or can't answer the question specifically that he compared the documents. He is merely saying that he is positive it was the guarantee. That's what his answer is.

Isn't that correct, sir?

THE WITNESS: Yes, Your Honor.

Q Now, are you certain that this Exhibit 11 that is being offered was one of the papers that you had with you that night or do you have some doubt as to whether it was one of the papers that was with you that night?

A Mr. Katz, I know whom you're referring to. There is the same wordking without Mortin Annis' letterhead--are you looking at that? I'm not supposed to ask you.

Q You're not really supposed to be interested in why I'm asking the question. The question is a very simple one. I'm trying to find out right now whether this paper, Exhibit 11, was one of the at least two copies of a guarantee which you say you had with you at the 21 Club on that night.

THE COURT: I think it might help him, why don't you allow Mr. Meier to look at the document. If he had it before him I don't know whether he could answer the question in any event.

A I think I have answered this question before because

physically this can't be the paper I would say.

Q Why?

A Let's do a little didactic work. If you put it in your jacket it apparently must have been folded and there is no trace of such.

Q That establishes in your mind, does it not, that Exhibit 11 was not one of the papers you had with you that night?

A It was a copy or two or three copies of that exhibit which I presented.

Q Please answer my question. Doesn't that establish in your mind that Exhibit 11 was not one of the papers that you had with you at the 21 Club on that night?

A I was the same worded guarantee.

Q I'm talking about the paper, Exhibit 11, are you not now clear in your mind that Exhibit 11 was not one of the papers that you had with at the 21 Club on that night?

THE COURT: This has already been answered.

MR. KOVNER: I must object. He testified that wasn't the document specifically, but a copy of it. That was in the initial foundation.

Q Now, what is there in your recollection that makes you remember that the papers that you had in your pocket that night were identical with Exhibit 11?

A It was the guarantee drawn by our lawyers, Harry Gottlieb. The main reason for my coming to New York and the only reason for meeting Mr. Mortin Annis at that dinner.

Q But you don't know whether the papers that you had in your pocket that night contained exactly the same language as Exhibit 11, do you?

A Would you repeat it? Exactly the same?

Q Language as appears in Exhibit 11.

A Exactly the same.

Q How do you know that?

A It was the guarantee drawn up by Harry Gottlieb's office.

Q Is that your only reason for saying that it was the same paper, that it was a guarantee?

A Yes.

Q You never examined the language in detail to determine that it was identical, word for word?

A When should I have done so?

A At any time before--did you at any time examine that Exhibit 11, that paper, together with the papers that you had in your pocket to determine if the language was the same word for word?

A I could not make any comparison. I had only one paper and various copies. I have not had to. I couldn't compare.

Q So you made no such comparison?

A Make your comparison between an original and copies which are supplied to you from a lawyer's office at the same time, when all the five copies have the same reading through?

Q You did not know?

A No, I did not.

Q Now, referring to Exhibit 11, I will now get to the question you were talking about--

MR. KATZ: I have completed my voir dire on this particular point and I object upon the ground that there is no proof that Exhibit 11 was the same document as one of the documents that was presented to Mr. Annis on that occasion.

MR. KOVNER: I think the witness has laid an adequate foundation for the admissibility of the evidence. He says that this is a copy of a guarantee that was referred--prepared by his lawyer, that he received a number of copies and delivered one. It seems to me that that is more than adequate foundation for the admissibility of this document.

THE COURT: Let me see it.

MR. KOVNER: Even though he did not actually compare that document, which appears to be an original, with the copies he had with them, as was brought out on voir dire.

In the terms that that document is the same, although on different letterhead with different signature structure,

I believe you will correct me if I am wrong, as the document that's annexed to the complaint.

MR. KATZ: We are not talking about that.

MR. KOVNER: I understand that.

THE COURT: It appears to me that this document is on Mr. Annis' letterhead.

MR. KOVNER: I did say that, Your Honor, that except for the letterhead and except for the manner in which the signatures are structured, are provided, that the testimony of the document remains the same as to the guarantee that is annexed to the complaint.

THE COURT: It seems to me--how did it get on Mr. Annis' letterhead?

MR. KOVNER: I think the testimony is that this was prepared by their lawyer.

THE COURT: Now, how can it get on Mr. Annis' letterhead?

MR. KOVNER: It was prepared in that fashion. There is a typed letterhead. It's not the actual letterhead.

THE COURT: I meant that.

MR. KOVNER: That was the form that was initially prepared by the lawyer and submitted. A somewhat slightly different form will ultimately be introduced and is already annexed to the complaint.

MR. KATZ: Mr. Kovner, you have just made some statements of fact, that it was prepared on Mr. Annis' letterhead. Those are factual statements that we don't have on the record at all as yet. I think it might be material to know just what time limit elapsed and just how it occurred that the original document, which is ordinarily in my lexicon, the document to be signed, was never presented or was not presented on the occasion testified to by the witness, and instead some other document which he says are copies, was presented.

It seems to me contrary to custom not to present the original document for signature.

MR. KOVNER: Mr. Katz, in fairness, the witness did testify it was prepared by the lawyer, he did testify that it contained typewritten the letterhead of the defendant on it and that he delivered copies of it. That was testified to.

THE COURT: Is that in the testimony?

MR. KOVNER: On the voir dire that my adversary drew out.

THE COURT: I missed that. Is that in the testimony?

MR. KOVNER: I think it is clear. We can go back. He testified where he got the document.

THE COURT: I know where he got the document. I know where he said it was prepared.

Was the document that was originally prepared by your lawyers, wasthat document prepared with that typed

letterhead in this form? Was it prepared in that form?

THE WITNESS: I don't think so. Can I go to my briefcase?

MR. KOVNER: May we just take a brief recess on it?

THE COURT: Yes, of course.

(Whereupon, a brief recess was taken.)

BY MR. KOVNER:

Q Having checked your file, does it refresh your recollection as to how you originally received this document?

THE COURT: By "this document," you mean--

MR. KOVNER: Plaintiff's Exhibit 11 for identification.

A Physically it was received from Intercontinental in confirmation of a cable which they sent saying non-signed copy of the guarantee sent to you.

MR. KATZ: Are you going to put that in?

MR. KOVNER: Yes.

Q Have you seen Plaintiff'sExhibit 12 for identification?

A Yes, this is a telex received by Weitnauer Trading on October 5, 1969.

Q Let me just go back in time before I offer this in evidence. Did you deliver a document to Mr. Annis on the evening that you had dinner at the 21 Club?

A Yes, I did.

Q And what did he do with it and what did he say

with respect to it?

A A discussion started, I don't know from whom , that the surroundings of the 21 Club in New York were not the ideal place for further discussions. It was decided that we move over to New York Hilton to my room.

Q And did you go to your room in the New York Hilton with Mr. Annis?

A With Mr. Annis, with Mr. Mortin Annis, Jr., Mr. Kassin, Mr. Radisch, Mr. Feldman.

Q What happened there?

A Now, either they had the document with them or I presented it again to them. They gathered in one corner of the room. I was standing a little bit outside because they had discussions among themselves. Finally I was told that they are not going to sign the document here because they would like to have further exchange of views between them and consult their lawyers, or whatever it is, and I would have been told what happened afterwards.

Q And did you then leave New York?

A Then we separated and the people went down and I stayed the night there and left the day after or two days after.

Q And did you receive Plaintiff's Exhibit12 for identification when you had returned to Switzerland?

A Yes, when I returned on October 1st we received that

cable saying that an unsigned copy of the guarantee was delivered and that it was handed over to Mr. Gottlieb.

Q Did it say--what did it say with respect to the unsigned copy?

MR. KATZ: I object unless the document is introduced.

MR. KOVNER: I offer this in evidence.

MR. KATZ: What happened to the offer of Exhibit 11?

MR. KOVNER: It's still pending. In view of his testimony, having refreshed his recollection from his file, I still am laying the foundation for Exhibit 11.

MR. KATZ: If Your Honor please, may I renew the voir dire on Exhibit 11? Because Exhibit 12 bears on it.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. KATZ:

Q I believe you testified that the day after the 21 Club meeting you sent a copy of what you believed to be Exhibit 11 to Mr. Kassin?

A No.

Q That's not correct?

A No.

Q Did you ever send such a copy to him?

A No. I said he sent a letter to Mr. Kassin referring

to the previous evening, that when the guarantee is signed he should remit it to Messrs. Gottlieb.

Q So that did you give Mr. Kassin a copy of or what you believed to be a copy of Exhibit 11 at the 21 Club meeting itself on the 24th or the 25th?

A I can't remember to whom I remitted the copies. Certainly to Mr. Annis because it was Mr. Annis' signature we wanted.

Q My question is did you give Mr. Kassin a copy?

A I can't answer.

Q And was Mr. Kassin present when he gave the copy to Mr. Annis?

A Yes.

Q Now--

MR. KATZ: Are you offering Exhibit 12?

MR. KOVNER: Yes.

MR. KATZ: I have no objection to the offer of Exhibit 12 so far as either genuineness or relevancy is concerned, but I do object upon the ground that it's not binding on the defendant. I'm willing that it be admitted so long as it is recognized that nothing in it bears any relation to this defendant, is not signed by the defendant, and is therefore not binding upon him.

MR. KOVNER: I think it speaks for itself and it

certainly is not signed by him.

THE COURT: All right.

(Plaintiff's Exhibit 12 is received in evidence.)

Q Now, is Exhibit 11 the copy--the unsigned copy of the guarantee that was mailed following your receipt of Exhibit 12?

A I am almost certain.

MR. KOVNER: I will offer Exhibit 11 in evidence.

MR. KATZ: I object on the grounds it is not even been identified properly.

MR. KOVNER: Your Honor, I'm going to withdraw the offer of Exhibit 11 at this time and proceed, since it is not that critical.

THE COURT: All right.

MR. KOVNER: I am reserving my right to reintroduce it.

THE COURT: All right, you're a bit premature though.

Q I show you Plaintiff's Exhibit 13 for identificationand ask you what that is?

A This is an original telegram which I received on October 8, 1969 from Tampa, Florida, reading: "Guarantee signed last week. Presented to your lawyers. Assume no further difficulties. Advise. Annis."

Q Did you receive this directly?

A Because the address was F. Meier, Weitco, it was delivered directly. When you address it Weitco, you get it as a Telex, like the previous exhibit. Although they are cables.

MR. KOVNER: I offer Plaintiff's Exhibit 13 for identification in evidence. I might note it was marked as an exhibit in one of the depositions.

MR. KATZ: This was not agreed upon in the 11 through 15 group and we therefore require a moment to look at it.

THE COURT: All right.

(Pause.)

MR. KATZ: I object on the ground it is not properly identified. It is not connected with the defendant.

MR. KOVNER: Your Honor, I would like to hand it to you. In brief response to that objection, if I may, point out that the testimony was it was received in the ordinary course of business. Second, that it was received directly by Mr. Meier, not sent to the company. Thirdly, that it was in response--in reply, in effect, to prior communications. Fourthly, that it bears the Tampa, Florida address which appears as the address on the undisputed letters of the defendant.

MR. KATZ: It was received out of the ordinary course of business in a different fashion which the witness

compelled to explain.

Secondly, there is not evidence that it was received in connection with any prior course of dealings which has been established as yet. And the fact of the Tampa address is of no legal significance.

THE COURT: Objection is overruled.

Q Mr. Meier, I ask you to look at Plaintiff's Exhibit 14 for identification and tell me what it is and when you saw it.

A This is the guarantee subject of all negotiations in New York which we received through our lawyers, Messrs. Harry Gottlieb, on or about October 4th or 6th, duly signed by Mr. Kassin, Mr. Mortin Annis, Sr., and as witnessed by Mr. Keiser.

MR. KATZ: I object to the words beginning with "duly signed," and I will ask a voir dire , if I may.

THE COURT: Yes. At the present time, since it is only identified the only question at this point before it is admitted into evidence, is whether or not you can identify the document, which I gather he did, and all the statements in regard to it are to be disregarded and by me and stricken at this time.

MR. KOVNER: You're asking a voir dire on the document in suit?

MR. KATZ: Yes.

VOIR DIRE EXAMINATION

BY MR. KATZ:

Q Did you ever see Mr. Annis sign that document?

A No.

Q Did you ever see Mr. Kassin sign the document?

A No, neither.

Q Do you know to whom that document was delivered after the written signatures appear on it?

A To the attorneys' office, Gottlieb.

Q To the attorneys of what?

A To Gottleib's office in Wall Street. Howard Gottlieb.

Q That's the attorneys representing Weitnauer. Is that what you're saying?

A The attorneys which made the draft of the guarantee.

Q They were the attorneys for Weitnauer, for this plaintiff.

A Yes.

Q And how do you know that that delivery was made?

A It was confirmed in a letter from Gottlieb. First a cable: "Have received, guarantee signed." Then they would mail it to us. Then a letter with the guarantee included.

Q So you're only knowledge that it was sent to the

attorneys was the attorneys' statements to you. Is that correct?

MR. KOVNER: I object, Your Honor. That question just flies in the face of the prior testimony.

Q Do you have any knowledge that the document that you're now offering in evidence, Exhibit 14, was ever delivered to the attorneys for Weitnauer, the Gottlieb firm?

A If it was not delivered he would have made it himself, which probably was not the case.

Q That's my question to you. Do you have any knowledge that it was delivered?

A Yes. If we got it it must have been delivered.

Q Is that the only basis for your saying you have knowledge, the fact that you got it?

A Yes and the cable from Intercontinental. And the cable from Mr. Mortin Annis.

Q Are you referring to some cable of Mr. Mortin Annis?

A Yes.

Q Will you show us what cable you are talking about?

THE COURT: Exhibit 13, I guess.

Q That appears to me to be a document that has not been identified as coming from Mr. Mortin Annis. Is that cable, when taken together with what you got from the Gottlieb firm, the only basis for saying Exhibit 14 was delivered to

the Gottlieb firm.

A No. We had three people confirming that the guarantee has been delivered.

Q Who were those three?

A Gottlieb received it; Intercontinental; Mr. Annis' cable, all referring to the same subject.

Q You say you have both an Intercontinental cable and a cable from Mr. Annis referring to it?

A Yes.

Q Which Intercontinental cable are you referring to?

THE COURT: Exhibit 12.

THE WITNESS: Exhibit 12.

THE COURT: Exhibit 12 says that an unsigned copy is coming or something to that effect.

MR. KATZ: I have the same objection, Your Honor. Exhibit 12 says an unsigned copy. He is now talking about a signed copy.

MR. LANKENAU: It certainly is. It says: "Signed copy being delivered to attorney Gottlieb, 64 Wall Street."

THE COURT: The objection is overruled. Exhibit 14 will be received.

(Plaintiff's Exhibit 14, is received in evidence.)

Q When you received this document, this guarantee, did you then proceed to confirm or assume the responsibility for

the payment of orders which had then been pending?

A Yes, we released immediately more than $100,000 worth of shipments to Intercontinental. In other words, we took actions on what we had.

Q Mr. Meier, I'm going to ask you to look at Exhibit 15 for identification and ask you to tell me what it is.

THE COURT: I'm not sure I understand this. The answer as to the last statement, you said that you released more than $100,000, or something like that of shipments.

THE WITNESS: Yes, Your Honor. We had all these piling up. The question of payment was not solved. So immediately when the guarantee came to hand, the confirmation, we say to the suppliers, who were all waiting for our answer, to go ahead and ship.

THE COURT: You--do I understand, you mean you had orders that had been placed and suppliers had indicated to you that they were prepared to fulfill those orders but they needed a guarantee of payment from you?

THE WITNESS: Yes, Your Honor.

THE COURT: Upon receipt of this document, 14, you then notified the suppliers and you estimate it was about $100,000 worth of goods?

THE WITNESS: Yes. That was the only purpose of my visit to New York anyway.

Q Will you describe what Plaintiff's Exhibit 15 for identification is?

A This is a Xerox copy of the ledger which Intercontinental had with Weitnauer Trading Company from '69 through to '71.

Q Where is the original of this ledger kept?

A The original of this ledger is kept in our accounting department.

Q In Basle?

A In Basle.

Q And are you familiar with the maintenance of the ledger as vice-president in charge of purchasing?

A Yes.

Q Did you supervise the Xeroxing of the ledger?

A Yes.

Q Is this a true copy of the ledger?

A Yes.

MR. KOVNER: I offer Plaintiff's Exhibit 15 for identification in evidence. This document has been attached to prior papers, I believe, to the complaint.

(Pause.)

MR. KATZ: If Your Honor please, there appears to be some very substantial differences here because the complaint

annexes a copy of the account, what purports to be the account, and it differs drastically from Exhibit 15. There may be an explanation for that but I don't know what it is.

(Discussion off the record.)

MR. KOVNER: Your Honor, apparently the copy that was annexed to the complaint was not the most final version of the account. This is a more recent one. The difference is related to transactions well after the period that liquor was being shipped. I'm only going to question at this time-- in any even I believe an adequate foundation has been laid.

MR. KATZ: I'm going to object upon the following grounds: Number one, that the record annexed to the complaint as being the account due is not the same as the exhibit being introduced. Subsequently it becomes a different account.

Secondly, it's not the best evidence because it does not contain the entire matter. We learn from the exhibit that is being offered has later transactions. We do not know whether it contains all of the later transactions including the credits. And there has been no ammended complaint in the interim since the original complaint was filed, and it seems to me that in offering an account, which has both debits and credits, it requires that the entire account be admitted today in order to determine what, if any, current amounts owing are.

As final objections, which I'm sure can be cured, it appears to be in another language which would have to be translated.

MR. KOVNER: Very briefly in response, Your Honor, first of all the testimony has been clear that this is the full account. The only differences between this ledger, is the copy of the existing ledger, and the one at the time the complaint was instituted was there were some entries subsequent. Those entries do not change the amount--the indebtedness. Under the earlier complaint the amount due was $165,000. At this point it was $171,000. The ceiling on the guarantee is $150,000. The complaint referred to an amount being due in excess of $150,000. It acknowledged that there was a nominal amount paid off the 174, but that discrepency can't possibly effect the issues before this Court.

THE COURT: Well, there are only two phases of the objections having any interest to me in terms of having any substance. The first is that it is not a full and a complete account. I want that ascertained because I certainly feel that if you're going to introduce an account that has been identified and I want it introduced one that is full and complete.

The only reason for a llowing anyone that is different from the complaint, is on the theory this is a corrected one

and therefore is authentic.

The other obviously is the one Mr. Katz said can be cured, but if I am going to read it it has to be cured fast, and that's the issue of the exhibit being in another language.

MR. KOVNER: May I, dealing with the first problem, ask Mr. Meier this:

Q Is this a true and complete transaction of every single transaction that was entered on the account of Intercontinental with Weitnauer?

A No. The ledger ends with the last booking--this is the last booking, yes.

Q So it's a full and complete account?

A A full and complete account, yes.

MR. KOVNER: Your Honor, the only words on this account--the words at the headings of each column are in German. They are very brief. I would ask my adversary to stipulate that the witness could translate, who is fluent in German, accurately those words when and if needed.

MR. KATZ: Why don't we do it now and I will stipulate that he can do it accurately.

THE COURT: All right.

Q Would you do that.

A In order from left to right the heading means control number.

MR. KOVNER: With the permission of the Court can we have him write the English translation on top with small letters?

THE COURT: Yes.

THE WITNESS: Control number. Now the second column is Date. The third column means evidence number or proof. The fourth means text. The fifth column means date of the proof or evidence. The other means value. THe next is debit, the other is credit. Next comes turnover.

THE COURT: What was that last one?

THE WITNESS: Turnover.

All witnesses are accumulated or accumulation.

The last is Basle.

Those are the translations.

MR. KOVNER: I would now like to offer this.

MR. KATZ: Are you offering it?

MR. KOVNER: Yes.

MR. KATZ: I renew my objections upon the ground that that is not the best evidence of the ledger sheets of this company . The best evidence is the original ledger sheet and that what purports to be a copy is not the best evidence. And that the only proper evidence would be the ledger sheets themselves.

THE COURT: All right, the objection is overruled.

(Plaintiff's Exhibit 15 is received into evidence.)

Q Mr. Meier, can you tell from this Plaintiff's Exhibit 15 when the first shipment of liquor was made to Intercontinental?

A Except one shipment on August 30th, which is the-- the invoices are numbered from one upwards. A third shipment in August, which was $200 for a sample shipment or something, the first shipment left October 17th. Then afterwards you had all these October, November, December shipments.

Q So the first major shipments were made after you received the guarantee?

A Yes.

Q Is the currency--what is the currency that is recorded here?

A The currency is legible on one page, I think. It's U.S. dollars. The account has always been kept in U.S. dollars.

Q In early October did the receipt of the guarantee solve the financial problems Weitnauer was faced with in connection with the Intercontinental orders?

A No. When I returned I came over one problem with one particular supplier, followed then by others. I was told in New York that Curtis Distillery, whom we mentioned before, would supply Intercontinental on credit, but they really did

not. So they came to me and telephoned me and asked for the guarantee.

Q And what did you do at that time.

A I communicated immediately with Intercontinental and Mr. Annis said, "What are we going to do now? We're in trouble again because all the guarantees are tied up and you placed further orders."

Q Did you request an increase of the guarantee?

A We requested an increase of the guarantee.

Q I show you a copy of Plaintiff's Exhibit 16 for identification and ask you what that is.

A These are my initials. I dictated the letter on October 8th to Intercontinental saying we are prepared to assist you even more and to give you another $30,000 as soon as we have yours and Mr. Mortin Annis' signatures on a similar guarantee.

MR. KOVNER: I would like to offer Plaintiff's Exhibit 16 for identification.

(Pause.)

MR. KATZ: Objection upon the ground that it bears no relation to the defendant. It's not addressed to him nor signed by him and therefore becomes irrelevant.

MR. KOVNER: Your Honor, just in response, it relates to the very issues, even though it is not, on its face,

addressed to the defendant but addressed to Intercontinental and represents the initial request of the further guarantee, which is one of the major issues in the suit.

THE COURT: Well, I will admit this tentatively; that is, the fact you are allowing it to be introduced only on the grounds there later will be some connections with that document and the defendant's.

MR. KOVNER: We will make such a connection, Your Honor, because we will attempt to prove a series of communications and discussions which involved the defendant. We would like to offer it then subject to that connection.

THE COURT: All right. It is received subject to connection.

(Plaintiff's Exhibit 16, received in evidence.)

Q Did you receive a response to your letter to Mr. Kassin requesting the increased guarantee by $30,000?

A Yes, we received a response that it is agreeable to them to increase the guarantee.

Q I show you Plaintiff's Exhibit 17 and ask you if you have seen that letter?

A Yes.

Q What is it?

A It is a letter addressed to me, received on October 16th.

Q Did you receive that in the ordinary course of business?

A In the ordinary course of business.

Q What is the letterhead?

A Intercontinental, Lake Success.

MR. KOVNER: I offer Plaintiff's Exhibit 17 for identification in evidence.

MR. KATZ: Objection on the ground we have never seen this letter before. It is an exchange between Mr. Keiser--it appears to be an exchange between Mr. Keiser and Intercontinental and Mr. Meier. It is on the Intercontinental letterhead. It has no reference to or bearing upon this particular defendant. I object.

MR. KOVNER: Your Honor, subject to the same connections, which shall be established, as was--under which condition Exhibit 16 was admitted, we offer this in evidence, since it relates to the issue of whether or not there was executed or authorized to be executed an ammendment to the guarantee, increasing the guarantee.

THE COURT: All right, I'll accept it. It will be received subject to connections to the defendant.

(Plaintiff,S Exhibit 17 received in evidence.)

Q After receiving the letter of October 13th, did the plaintiff receive an increased guarantee in the amount of

$30,000?

A No, we did not receive anything but we received information that Mr. Mortin Annis is coming to visit us.

Q Did the plaintiff write to Mr. Annis in connection with this--with the requested increases reflected in Exhibits 16 and 17?

A Yes, when we heard that Mr. Annis was coming to visit us we wrote him a letter and I think we mentioned the point which we wanted to have discussed at the meeting.

Q I show you a copy of Plaintiff's Exhibit 18 for identification and ask you if you have seen it before and could you identify that document?

A This is a letter written by Weitnauer Trading to Mr. Mortin Annis, Tampa, reminding him of the question--

Q What is the date of the letter?

A The date is November 4th.

Q Can you tell who wrote that at Weitnauer?

A Written by or dictated by Mr. Thomann, member of the board, and reminding again of the question of convertible bonds and mentioning that Mr. Kassin has asked Weitnauer Trading to increase the guarantee over and above $100,000 already granted.

MR. KOVNER: I offer Plaintiff's Exhibit 18 in evidence.

MR. KATZ: No objection.

THE COURT: All right.

(Plaintiff's Exhibit 18, received in evidence.)

Q After this Exhibit 18 was mailed, did Mr. Annis in fact come to Basle to visit Weitnauer?

A He came to Basle on November 20th.

Q And was there a meeting with you and other members of your firm with Mr. Annis?

A Yes, there was a meeting with Mr. Annis, Mr. Adolph Weitnauer, Mr. Thomann and myself.

Q Was anybody else with Mr. Annis that trip?

A No.

Q What was discussed at that meeting?

A Discussed was--

Q In connection with the personal guarantee.

A Discussed was the increase of the guarantee which was laid down in the letter of November 4th. We asked Mr. Annis to increase the guarantee by $50,000.

Q And what did Mr. Annis say when he was asked to increase the guarantee by $50,000?

A Mr. Annis said that he agrees, but he wanted to have Mr. Kassin and Mr. Feldman also to sign this guarantee and we should receive for these gentlemen their private financial statement.

Q Mr. Kassin had already signed the first guarantee, hadn't he?

A Yes, he had.

Q So the only new guarantor he was asking for was Mr. Feldman?

A Was Mr. Feldman.

Q Who was Mr. Feldman?

A Mr. Feldman, when I met him in New York, was not an officer of the company. He worked in Pittsburg with some paper or packaging company but was their advertising publicity consultant.

Q Now, what did you say in response to Mr. Annis' condition that Mr. Feldman and Mr. Kassin be added as co-guarantors?

A We say no objection.

Q And what did he say in connection with that matter?

A He said when returning to New York he would let us have further information.

Q When you say further information, were those his words or was he more specific?

A I think he said he would let us have the guarantee.

Q He said he would let you have the increased guarantee?

A The increased guarantee, yes.

Q And after he returned to New York during the

balance of 1969 did you in fact receive the increased guarantee?

A No. We didn't receive it in '69.

Q And when you didn't receive it, did you have occasion to write to him about it?

A We wrote in early January that we must settle this matter of the guarantee, otherwise we would not be able to guarantee--to release anymore shipments.

Q I show you a copy of Plaintiff's Exhibit 19 for identification and ask you what it is.

A This is a copy of a letter which I wrote to Mr. Annis on January 13th. Urgent problems, payment, Intercontinental, which we have to guarantee. They agreed to increase it from 100 to $150,000 and I would like to have further information.

MR. KOVNER: I would like to offer Plaintiff's Exhibit 19 for identification in evidence.

MR. KATZ: No objection.

(Plaintiff's Exhibit 19 is received in evidence.)

Q Plaintiff's Exhibit 19 states: "When cabling them they answered they are prepared to increase the guarantee from $100,000 to $150,000." Who is the "they"?

A That meant Intercontinental.

Q Well, why did you write this letter if Intercontinental

had agreed?

A Because we wanted Mr. Annis, as discussed also--not also, to sign the guarantee. Mr. Annis' signature we're looking for.

Q After you mailed that letter did you receive an ammended guarantee?

A Yes, we received the ammended guarantee January 14th, the increased guarantee.

Q Well, I ask you to look at Plaintiff's Exhibit 20 for identification which is dated January 14th, although marked received January 19th, and ask you what that document is and if you have seen it before?

MR. KATZ: Has it been marked for identification?

MR. KOVNER: It has been marked Exhibit 20 for identification and it, of course, is one of the documents in suit and is so annexed to the complaint.

A This is the ammendment or increase of the guarantee of September 30th to an amount of $150,000.

Q When did you receive it?

A We received it exactly on January 19th.

MR. KOVNER: I would like to offer Plaintiff's Exhibit 20 for identification into evidence.

MR. KATZ: May I have a voir dire on this, Your Honor?

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. KATZ:

Q Did you ever see Mr. Annis sign this document?

A No, I didn't see it.

Q To your knowledge was there any person employed by or acting on the part of Weitnauer who saw Mr. Annis sign this document?

A No.

Q Was there anybody on the part of Weitnauer or employed by Weitnauer who was in New York in January, 1970?

A Not that I know of.

Q Do you have knowledge as to how it happens that this document is on the letterhead of Intercontinental rather than on Mr. Annis'?

A Yes. As I discussed, Mr. Annis wanted the signatures of Mr. Kassin and Mr. Feldman.So it's quite natural that it was on Intercontinental's letterhead.

MR. KATZ: I object on the ground that this has not been identified as the signature of Mr. Annis and is therefore not binding upon him. It's a crucial document in this case, and therefore should not be admitted into evidence.

THE COURT: Let me see it.

MR. KOVNER: Here, Your Honor.

(Document handed to the Court.)

MR. KATZ: I might ask counsel a further question if the Court will permit.

Does counsel contend that Mr. Annis affixed his signature to that document?

THE WITNESS: Can you repeat that?

MR. KATZ: I'm not speaking to you, I'm speaking to your attorney.

MR. KOVNER: Your Honor, I think that's improper. Our position is that the document speaks for itself. I think there is a host of other correspondence in connection with it. I think the document speaks for itself. You have heard our testimony, the testimony in connection with its execution.

MR. KATZ: If Your Honor please, the statement that the document speaks for itself is not so because the document bears a signature which purports to be that of Mortin Annis. All I'm asking counsel is whether he claims that Mortin Annis affixed his signature to the document. Counsel is now not answering. I believe that he should at least take a position as to whether he claims that the document does speak for itself, it contains a signature purporting to be that of Mortin Annis.

I'm asking whether he intends to claim that Mortin Annis ever affixed his signature to that document.

MR. KOVNER: If Your Honor wishes, I will respond if it is relevant. Our position is that either Mortin Annis either signed the document or authorized someone else to affix his signature. In any event ratified the affixation of that signature with his knowledge, and we do not know whether he signed it or somebody else signed it with his authority.

But it is clear by virtue of the conversations, the deal ings both before and after the execution, that it was signed with his approval.

MR. KATZ: I object to the introduction of that document.

THE COURT: We will take a recess. I will think about it over lunch.

MR. KATZ: I'm sorry, I didn't hear that, Your Honor.

THE COURT: I will think about it over lunch. We will take a luncheon recess.

MR. KATZ: When shall we return?

THE COURT: Two o'clock.

(Luncheon recess taken.)

AFTERNOON SESSION

2:00 p.m.

(In open court.)

FRITZ MEIER, resumed the stand and testified further as follows:

MR. KOVNER: Your Honor, if the Court deems necessary in connection with the foundation for the exhibit upon which you reserved ruling, I could read into evidence a portion of the deposition of Ronald Kassin previously taken which bears on the manner in which that document was executed. I had planned to introduce the Kassin testimony, or portions of it, at the conclusion of Mr. Meier's testimony, but I think it might be helpful to do it at this time.

THE COURT: That's up to you, Mr. Kovner. It's your case.

MR. KATZ: As I understand it what's being done right now, is Exhibit 14, which has previously been discussed--

MR. KOVNER: It's Exhibit 20, dated January 14th.

MR. KATZ: The one I just handed you, my copy?

MR. KOVNER: No, no. This is the ammended guarantee. It's dated January 14th raising it $50,000. I wish to establish a further foundation.

MR. KATZ: Before introducing it?

MR. KOVNER: On the question of its admissibility.

I'm introducing the testimony of Mr. Ronald Kassin taken in an examination before trial on May 31, 1973, in Chicago, Illinois.

Reading from that examination--

MR. KATZ: What is the page, please?

MR. KOVNER: Page 12..

"Mr. Kovner: I would like to have marked for identification as Plaintiff's Exhibit B a letter on Intercontinental stationery to Weitnauer Trading Company dated January 14, 1970, previously marked for identification at the 1971 examination before trial of the defendant, Mortin Annis, Sr.

(Whereupon, said document was marked Plaintiff's Exhibit B, for identification.)"

Skipping over to page 13, over, I think, inconsequential material, "Mr. Kassin, I ask you to look at Plaintiff's Exhibit B and ask if you recall ever having seen that document before?"

"A Yes."

"Q Is the first signature on that document yours?"

"A Yes."

"Q Is the third signature on that document that of Leonard Feldman?"

"A Yes."

"Q Who was Mr. Feldman, what was his association

with Intercontinental?"

"A Mr. Feldman I believe at this time was a vice president of the company. He was also in charge of all the merchandising and advertising for the company."

"Q Do you recognize the second signature on that paper?"

"A I don't--yes. Well, can we hold that up? This has got to be a crazy answer because of the form of the question."

"Q State it."

"A I recognize it but it's not Mr. Annis', if that's what you're looking for."

Then skipping over some other extraneous material--

THE COURT: What page?

MR. KOVNER: Still on page 15.

"Q Do you know the circumstances surrounding the affixation?"

"A Yes."

"Q Of the name Mortin Annis on the second line, the second signature on Exhibit B?"

"A It was signed by Mr. Feldman."

"Q Was Mr. Feldman authorized to sign?"

"A Yes."

MR. KATZ: Objection on the ground that it calls

for a conclusion. It's an improper question and answer.

THE COURT: I think that's right unless you show me more than that.

MR. KOVNER: Yes. I go on to the next question for which I believe no objection was recorded.

"Q Did Mr. Annis, during the period that you served as President of Intercontinental"--I'm sorry, let me reread the question.

"Did Mr. Annis, during the period you served as President of Intercontinental, authorize any of the officers of Intercontinental to sign his name to documents?"

MR. KATZ: Same objection

MR. KOVNER: "A Yes."

MR. KATZ: I make the same objection.

MR. KOVNER: I think on this question, Your Honor, which relates to whether or not the witness, Mr. Kassin, received authority, he is competent to answer as to whether he was authorized.

MR. KATZ: An authorization, if Your Honor please, calls for a conclusion.

THE COURT: I agree.

MR. KOVNER: "Q Did you witness the affixation of the name Mortin Annis to that document by Leonard Feldman?"

"A I don't remember."

"Q How do you know that it was Mr. Feldman who signed it?"

"A Mr. Feldman at that time informed me that he had signed it because Mr. Annis was not available."

MR. KATZ: I object to that on the ground that it's hearsay.

THE COURT: All the objections to me seem to be well taken. All right.

MR. KOVNER: I'm sorry.

THE COURT: The objection was on the ground of hearsay and that objection is well taken.

MR. KOVNER: On the question of authority, there is a question I would like to read, which I think supports the admissibility of the information on authority.

MR. KATZ: What page?

MR. KOVNER: 16.

"Q How was that authorization granted?"

"A At one time in a discussion with Mr. Annis, Mr. Feldman and I were both told that if he was out of town or out of state, that if anything came up, that he could sign his name."

MR. KATZ: I make the same objection, Your Honor. I take the further objection that this is a rather indefinite

authorization. Number one, it's conditioned upon his being out of town or out of state. Secondly, if anything came up we could sign his name. Thirdly, that it is incredible that any person in the ordinary--in his right mind would be referring to a hundred or $150,000 guarantee with reference to such a remark. Fourthly, that it is a verbal authorization which violates the statute of fraud in the fact that it is an authorization, according to the claim, it's an authorization to guarantee the debtor obligation of another, and it's verbal.

THE COURT: Yes, Mr. Kovner.

MR. KOVNER: Well, I think the objection that Mr. Katz has made may go to the weight to which this evidence is to be given, but certainly not to the admissibility of the evidence. I grant that it's a rather broad and vague statement of authorization, yet it was his best recollection and is admissible since it was a statement of fact that occurred in his presence.

THE COURT: Well, I'm going to allow it in. I'm not sure at the present time, unless there is some stronger evidentiary proof of his authorization given, I'm not sure that I'm going to give this document, as far as his signature is concerned, very much credence. In order for you to continue on with the case, I'll let it in, with the

caveats I've just mentioned. I don't think it's worth much at the present time.

MR. KOVNER: I'm going to expand upon it in the next exhibit, but in view of your ruling may I ask that Exhibit 20 be marked in evidence.

(Plaintiff's Exhibit 20 is received in evidence.)

BY MR. KOVNER:

Q Following the receipt of the ammended guarantee, did you receive a further communication from Mr. Annis?

A Yes, we received a letter in January from Mr. Annis confirming the increase of the guarantee.

Q I show you a copy of Exhibit 21 for identification and ask you if you have ever seen that before and under what circumstances?

A This is a letter which I received after January 19th referring to my letter of January 13th where I mention the increase of the guarantee and concluding that Mr. Mortin Annis is in guarantee to raise the guarantee to $150,000.

Q Was this sent directly to you?

A Sent directly to me, yes.

MR. KOVNER: I'd like to offer Exhibit 21 for identification in evidence.

MR. KATZ: This is the paper we have not seen before?

MR. KOVNER: You have seen it twice and you contest its genuineness.

MR. KATZ: May I have a voir dire, Your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KATZ:

Q You never saw Mr. Annis affix his signature to this letter, did you?

A No.

Q And with respect to the language in this letter saying--and this is a letter dated January 19, 1970--"The financial statement should be ready very shortly."

Do you know what financial statement he is talking about?

A Yes. On the November 20th discussion when Mr. Mortin Annis said he would like Mr. Kassin and Mr. Feldman to give us their financial statements, because they would also sign the guarantee, it refers to that. Or to the statement again of Intercontinental.

Q You don't know which it was?

A It was certainly the one for Mr. Kassin and Mr. Feldman.

Q Was this a financial statement that you had asked for?

A Mr. Annis suggested, and we gave the task to him, a financial statement of Mr. Kassin and Mr. Feldman.

Q And do you know when this was received by either your or Weitnauer, referring to the document now offered as Exhibit 21?

A This particular letter which you have in hand?

Q This particular letter.

A Was received 23rd, 24th of January.

Q Is there any indication or stamp on it to indicate that it was received?

A Can I look at the document because there are maybe some handwriting notes.

Q Yes.

(Document handed to witness.)

A No, it's no mention when it was received.

MR. KATZ: What's the last answer?

THE COURT: He answered: "There is no mention when it was received."

Q Now, your regular course of business was to stamp such a letter when it was received. Is that not the case?

A No. You have one letter which is personally addressed tome which is stamped. The normal procedure is any letter which is addressed to the company and even when it's mentioned "attention, Mr. Meier" is opened at the mail desk

and stamped. However, when a letter is addressed "Mr. Meier, Weitnauer Trading," it will not be opened at the desk. It will hand it over to you without the stamp. But, of course, you have differences. Statements when you have a pile of mail, it slips through and it's opened and stamped. You can't take that as a general rule.

Q You mean sometimes it was done and sometimes it was not done?

A Yes.

Q Is it not a fact that this letter, which is offered as Plaintiff's Exhibit 1, was not handled in the ordinary course of business of Weitnauer Trading Corporation?

A That was handled in the ordinary course of business.

Q Well, was it the ordinary course to put such a stamp on it or was it not the ordinary course to put the stamp on it?

THE COURT: Mr. Katz, he just explained it. I don't want us to go over this again and again. He explained very clearly that when a letter was addressed to Weitnauer Trading Company it was opened and stamped. If it was addressed to any of the officers of the company personally it was not opened. I gather by that it was delivered to him unopened.

Q I show you--

THE COURT: And he added that sometimes it slipped through.

Q I show you Exhibit 6 and Exhibit 24, which are addressed to you personally, and ask you whether that's the fact that those do bear the stamp?

A I agree with you from here.

Q You have two letters addressed to you personally in the identical form of Exhibit 21 and those were stamped, bore the stamp and the circulation slip. Is that correct?

A Yes, that's correct.

Q Therefore, my question is to you is, is it not the fact that Exhibit--the page offered as Exhibit 21 was not received by Weitnauer in the ordinary course of its business?

A It was received by Weitnauer in the ordinary course of business.

MR. KATZ: I object, if Your Honor please, upon the ground that no proper identification that the signature of the defendant, tying it to the defendant, has not be identified and that it has likewise not been identified as a book entry because it's clear from the other testimony that this was not received in the ordinary course of the business of Weitnauer Trading Company, Ltd.

MR. KOVNER: Your Honor, very briefly in response, already admitted into evidence is the January 13th letter. That letter is in response. It's under the reply doctrine and on the letterhead of the defendant.

THE COURT: Objection is overruled. The document is received in evidence.

(Plaintiff's Exhibit 21 is received in evidence.)

MR. KOVNER: I think your voir dire has completed all my questioning on that document.

DIRECT EXAMINATION (Cont'd)

BY MR. KOVNER:

Q Following the receipt of the ammended guarantee as confirmed by the letter of January 19th, Exhibit 21, did that solve all the financial problems for Weitnauer in connection with the orders placed by Intercontinental?

MR. KATZ: I object to the form of the question. I object on the ground that it assumes facts not in evidence and that it's contrary to the document itself, because the claim is that--

MR. KOVNER: Mr. Katz, I will rephrase the question.

MR. KATZ: All right.

Q Following the receipt of Exhibits 21 and 20, did there remain outstanding financial problems facing Weitnauer in connection with Intercontinental?

A Yes. We released orders for another $50,000 but further requests from Intercontinental came from the suppliers or to us.

Q Did you receive payments on the invoices that you had

sent to Intercontinental in connection with the October shipments and the November shipments?

A A first payment of some $4,000 came in but I can't remember exactly when.

Q Was other money then due?

A Yes, the invoices--I have negotiated for sixty days on shipments. On certain cases I was able to get ninety days which was transferred to Intercontinental. And invoices became due.

Q What did you do about this problem?

A We wrote letters to Intercontinental.

Q I show you a copy of Exhibit--Plaintiff's Exhibit 22 for identification and ask you if you have seen it before and under what circumstances?

A Yes. That's a letter I dictated on February 5th.

Q Can you tell from that letter to whom it was sent?

A It was sent to Intercontinental with a copy to Mr. Annis, because the orders just came in and I din't know because we had already committed $40,000.

MR. KOVNER: I'd like to offer Plaintiff's Exhibit 22 for identification in evidence.

THE COURT: Is that a document in the disputed group?

MR. KATZ: Not as to genuineness. It's disputed as

to relevance. This is a document which--

THE COURT: I'm going to have to insist, because this case has to pick up. The way we are proceeding at this time we will be here a week. I understand this case would take two days to try. If there is no objection to the genuineness of the document then I want those documents reviewed faster and any objections made.

MR. KATZ: The document that was shown to us, if Your Honor please, and the document we are now being presented with are two different documents because there is some handwriting at the top of the one that's being offered in evidence which was not on the one presented to us. That's number one.

Number two, this document, while there is no dispute as to its genuineness, because it's a document as between Intercontinental and apparently Mr. Meier, is not at all binding. It's not at all relevant. It has no reference to this defendant.

THE COURT: You make whatever objections you want. You make whatever objections you feel you want to make. What is annoying me at the present time and delaying this trial is every piece of paper we have to sit here for five minutes while you and your associate study it. I had assumed that most of these things had been gone over before. If they're not, I think what we ought to do to speed up the trial is for

Kovner to give you those documents and go over them so we can proceed with this case.

MR. KATZ: That might help. There is some German language at the top of the paper which we have never seen before at all.

THE COURT: Well, Mr. Kovner, let Mr. Katz see all of the documents.

MR. KOVNER: All of the correspondence he has seen. It's only noncorrespondence that he has not seen. His office has agreed to genuineness, except as to the last letter where he contested the signature. The only change in this letter is that there are some markings on their office copy that obviously were not sent. If he wants a voir dire on that, no objection.

THE COURT: You're not submitting the written additions as being a part of the document, are you?

MR. KOVNER: No. I'm introducing a carbon copy of the letter. A notice to produce the original was served on my adversary last week. They have conceded it's genuine.

MR. KATZ: There is nothing in the record this was received by Mr. Annis. This is correspondence between Intercontinental and Mr. Meier.

MR. KOVNER: It says on its face copy to him.

THE COURT: That's an entirely different objection.

I'm not concerned about the kind of objections you're making, I'm concerned about the time. Not what objections you make. If you want to make an objection I want it made. I want the case to move faster.

MR. KATZ: We were served with this notice to produce--how many days ago was it?

MR. KOVNER: It was the early part of last week.

MR. KATZ: The early part of last week. We cooperated. And all we were asked to do was to produce what we have.

THE COURT: All right, Mr. Katz, make whatever objections you want to make on the document.

MR. KATZ: I object on the ground it is not binding on the defendant, does not refer to the defendant except by a reference to the fact that there is an endorsement that a copy was sent, and that it is irrelevant because it does not bear on any liability of this defendant.

THE COURT: All right.

MR. KOVNER: Just briefly, Your Honor, in response, the document by its terms, copy of which was sent to the defendant, acknowledges that the guarantee was increased by $50,000.

MR. KATZ: He is talking about Kassin's guarantee.

MR. KOVNER: I'm talking about the guarantee as to which testimony has been previously submitted.

THE COURT: All right, it will be received. Objection overruled.

(Plaintiff's Exhibit 22 is received in evidence.)

BY MR. KOVNER:

Q In Exhibit 22 you were seeking approximately $130,000 on past due invoices. Did you receive payments thereafter which substantially reduced those invoices?

A The letter is dated what?

Q February 5, 1970.

A I think a small payment of $4,500, $5,000 came in in April or May. It must be seeon on the statement.

Q Would this refresh your recollection as to when further payments were received, looking at Exhibit number 15?

A Payment, April 22nd, $4,990.90.

Q In the period following the sending of Exhibit 22 did you have occasion to correspond with the defendant and Intercontinental about the size of the outstanding indebtedness?

A I had a lot of correspondence because the things were not running too well. And I would like to explain here the situation in which I have been.

Mr. Mortin Annis has just been elected as President of a division of General Cigar. I saw that Intercontinental was delayed on many answers and they didn't work well. But I was hesitating. I really did not dare to write officially to Mr. Mortin Annis at that time to please have a look at

your company. So I made a little bit a diplomatic way and I sent from letters to Mr. Kassin copies to Mr. Annis so that he got aware of the situation which was developing.

Q In the spring of that year did Mr. Annis have occasion to correspond with the plaintiff with regard to Intercontinental?

A Yes. Mr. Annis sent us certainly letters.

Q I show you a copy of Plaintiff's Exhibit number 23 for identification and ask you if you have seen that before and under what circumstances?

A Yes. This is a letter addressed from Mr. Mortin Annis to Mr. Thomann, which I have seen according to external markings on the exhibit, all dealing with payments.

MR. KOVNER: This is a disputed document, Your Honor. I'd like to offer Exhibit 23 for identification into evidence.

VOIR DIRE EXAMINATION

BY MR. KATZ:

Q Do you have any knowledge of your own as to whether the signature on this letter is that of Mr. Annis?

A No.

Q How did you receive this letter?

A Ordinary mail. Mr. Thomann received it.

Q You did not?

A He made the note up. I crossed it through. That

means I have seen it.

THE COURT: He received it and sent it around to you. Is that your testimony?

THE WITNESS: Yes.

MR. KATZ: I object on the same grounds. It's not connected to the defendant in any way and it's relevance-- it's genuineness has not been conceded but denied. It has been consistently been denied throughout this law suit.

MR. KOVNER: Your Honor, I offer Exhibit 23. It appears on the very same stationery--

THE COURT: Objection overruled.

(Plaintiff's Exhibit 23 is received in evidence.)

BY MR. KOVNER:

Q I show you Plaintiff's Exhibit 24 for identification. Will you tell me whether you have seen that before and what it is?

A Yes. It is a letter I received from Mr. Annis on March 31st.

MR. KOVNER: The genuineness of this has been conceded and I offer it into evidence.

MR. KATZ: No objection.

(Plaintiff's Exhibit 24 is received in evidence.)

Q I show you a copy of Plaintiff's Exhibit number 25. Could you tell me what it is?

A That is a letter from Mr. Annis, Sr., sent to Mr. Weitnauer personally. It deals with various matters, among them also Intercontinental. Informing us of a forthcoming visit.

MR. KOVNER: The genuineness of this document has been conceded, Your Honor, and I offer it into evidence, Plaintiff's Exhibit 25.

MR. KATZ: No objection. I might say, incidentally, Your Honor, that the plaintiff in support of one document read into it a portion of the examination of Mr. Kassin.

Now, I have not wanted to interrupt his presentation to read the remaining portion, even that which bears on what he read, but I would reserve my right when he finishes his presentation to do so.

THE COURT: All right.

MR. KOVNER: At an appropriate time, Your Honor, there are other portions of it I want to introduce and you can have your opportunity then.

(Plaintiff's Exhibit 25 is received in evidence.)

Q Mr. Meier, I show you a copy of Plaintiff's Exhibit 26 for identification and ask you if you have seen it before and what it is.

A Yes, I have seen it before. It is a letter from Mr. Mortin Annis and it is to Mr. Thomann, which I have seen,

dealing with the financial position of Intercontinental in general.

Q Is there any indication on that that you received a copy of it when it arrived in the offices of the plaintiff?

A Pardon?

Q Is there any indication on that letter that it was circulated?

A Yes, indication it was circulated to Mr. Adolph Weitnauer and to myself.

Q MR. KOVNER: This is the last disputed letter, Your Honor, and I offer it in evidence. Plaintiff's Exhibit 26, for identification.

MR. KATZ: I withdraw the objection. It is not in dispute.

(Plaintiff's Exhibit 26, received in evidence.)

Q Did there come a time in September, 1970 when you were informed, or in August, 1970, when you were informed that Mr. Kassin had been replaced as the President of Intercontinental by Mr. Feldman?

A Yes, that came in August or September.

Q And how did you first learn about it?

A On September 20th we got a letter from Mr. Feldman saying he is the President of the company, but I think we had got that before in a telephone call or something.

Q Was any reason given to you for the replacement of Mr. Kassin?

A Apparently Mr. Kassin had not managed the company as he should do.

Q Was any further reason given?

A He was accused of having fraud and similar business practices in a very precise and distinctive way.

Q What did the plaintiff do when he had learned of this disturbing news?

A The plaintiff informed us and said--

Q No, the ph intiff is Weitnauer.

A We continued to insist on having a clear situation on payment with Mr. Mortin Annis.

Q I show you a copy of Plaintiff's Exhibit 28 for identification and ask you if you have seen it before and under what circumstances?

A Yes, this is Mr. Thomann's letter to Mr. Mortin Annis where he, again, dealt with the financial statement of Intercontinental and mentioned the existing guarantee clearly.

MR. KOVNER: I offer Plaintiff's Exhibit 28 for identification in evidence.

MR. KATZ: No objection.

THE COURT: All right.

(Plaintiff's Exhibit 28, received in evidence.)

Q Did Weitnauer receive a response from Mr. Annis to Exhibit 28, sent on September 22nd?

A Yes.

Q Did you receive a response--

A There was a time when there was quite some time no answer, then there came a telegram, answer in the mail, because we continued to insist on an answer.

Q I show you Plaintiff's Exhibit 29 for identification and ask you if you have seen it before and under what circumstances.

A The same question arouses again in a letter; no payments made, unsafe situation.

Q Have you seen this before, Mr. Meier, and what is it?

A It's a confirmation of a letter which we received from Mr. Feldman that when he asked in a circular letter to all creditors of Intercontinental--

MR. KATZ: Have you got your exhibit number right?

A --to have a memorandum.

MR. KATZ: Which exhibit? You said 29.

THE COURT: You're on 29?

MR. KOVNER: I'm sorry, it's 29. It's the October 6th letter from Weitnauer to Annis.

Q First I'm asking you, Mr. Meier, have you seen that

before and what is it?

A It's a letter written by Mr. Thomann to Mr. Mortin Annis, October 6th.

MR. KOVNER: There is no dispute as to genuineness of this document and I offer it in evidence.

MR. KATZ: No objection.

THE COURT: All right.

(Plaintiff's Exhibit 29 is received in evidence.)

Q Now, did the plaintiff in October remind the defendant of its responsibility under the guarantee?

A Yes.

Q Had you received--

MR. KATZ: If Your Honor please, I'm going to object. I'm not objecting to the prior question out of lack of harmfulness. I'm going to object to the form of the questions which are leading and put words into the witness' mouth.

THE COURT: I agree. I think even though there is no jury, I would like to hear Mr. Meier testify.

Q Why was Exhibit 29 sent as far as the plaintiff was concerned?

A It was sent because Mr. Feldman asked for a memorandum from Weitnauer. Then we asked Mr. Mortin Annis, again indicating we must be paid based on your guarantee with us, or through Intercontinental, as it is written here.

Q Did you receive any response by way of payments to Exhibit 29?

A I don't know whether it was exactly as a response to that, but at that time we got some notes, non-negotiable notes. We were never paid. It was rather complicated at that time.

MR. KOVNER: I believe, Your Honor, those notes were delivered somewhat later. And what I'm asking is in response to the October 6th letter, did you actually get payment, did you actually get monies from Intercontimntal?

A No.

Q I show you a copy of Plaintiff's Exhibit 30 for identification and ask you if you have seen it before and under what circumstances?

A Yes, that was received in the course of ordinary mail, addressed to Mr. Thomann and shown to me. Where he mentioned that Mr. Feldman is now President of the company.

MR. KOVNER: I offer Plaintiff's Exhibit 30 for identification into evidence.

MR. KATZ: If Your Honor please, could we have, before the exhibit is accepted, could we have the German at the bottom of the letter translated?

THE COURT: All right.

THE WITNESS: Yes. That handwritten note reads:

"Has crossed with our letters. A complete repayment until October 31, cancellations of all our agreements with Intercontinental."

The actions to be taken on this letter.

MR. KATZ: No objection.

THE COURT: All right.

(Plaintiff's Exhibit 30, received in evidence.)

Q At this time in October, 1970 did the defendant ever challenge the existence of the guarantee to you either by phone or mail?

A No. He never made any comment on the indications of the guarantee.

MR. KATZ: I'm going to object to the form of the question and the answer on the ground that it uses the words "the guarantee," rather than referring to any personal guarantee by the defendant.

THE COURT: All right, I think that for the purpose of your record, and I think I understood it, but I think you should clarify it, Mr. Kovner.

Q By the term "guarantee" Mr. Meier, the guarantee with the $100,000 ceiling dated September 30, 1969, as ammended to raise the ceiling to $150,000 dated January 14, 1970. So my question relates to the guarantee as ammended.

MR. KATZ: I object to the form--go ahead.

MR. KOVNER: I'm defining what I mean by guarantee.

Q Did the defendant in October, 1970, by phone or mail or otherwise, challenge the validity of the mail or guarantee?

A No, he didn't.

MR. KATZ: I object on the same ground, that it is not tied to the defendant. The fact that there is a guarantee in this case by Intercontinental or by Kassin or Feldman is irrelevant. The question is whether there was an agreement by this defendant.

THE COURT: The objection is overruled. It's clear to me. Let's proceed.

Q I show you Plaintiff's Exhibit 31 for identification and ask you if you have seen it before and under what circumstances?

A Yes, this is a letter in the ordinary course of mails and put into circulation here, mentioning Mr. Kassin and mentioning Mr. Feldman.

MR. KOVNER: I'd like to offer Plaintiff's Exhibit 31 for identification into evidence.

(Plaintiff's Exhibit 31, received in evidence.)

Q I show you Plaintiff's Exhibit 32 and ask you if you have seen it before and under what circumstances?

A This is a letter by Weitnauer Trading to Mortin

Annis, Mr. Mortin Annis. When we receive the small checks and objected and saying that we are not satisfied. Also mentioning the existing guarantee now in our favor.

MR. KOVNER: If I have no objection from my adversary, I would like to ammend this offer to include Exhibits 33, 34 and 35 at once in the interest of time. I think they are all undisputed. Would you briefly just say what 33, 34 and 35 are?

A 33 is a letter from Weitnauer Trading to Mr. Mortin Annis, payment questions again, and mentioning guarantee.

Letter of December 16th, written by Mr. Mortin Annis to Mr. Adolph Weitnauer, suggesting a visit of Mr. Feldman in Basle.

December 31st, a letter from Weitnauer to Mr. Annis dealing with guarantee and dealing with payments.

MR. KOVNER: I'd like to offer Exhibits 32 through 35 for identification into evidence.

MR. KATZ: No objections.

MR. KOVNER: This is Exhibits 32 to 35.

(Plaintiff's Exhibit 32 through 35 are received in evidence.)

Q Did there come a time when Mr. Weitnauer made a formal demand upon Mr. Annis for the payment under the guarantee?

A Yes.

Q Is Exhibit 33 that formal demand?

A Yes, this is a letter which Mr. Weitnauer personally wrote to Mr. Annis on December the 9th.

Q In response, what did--did Mr. Weitnauer receive anything?

A Mr. Weitnauer received an answer, yes.

Q What was the thrust of the answer?

A Just if the answer was that Mr. Feldman is coming to us.

Q Did there come a time when the plaintiff instructed its attorneys in New York, Harry Gottlieb, to seek to contact the defendant in connection with the guarantee?

A Yes. This time came in December, 1970.

Q Could it be January, '71?

A I don't know '71.

Q Do you know whether Mr. Gottlieb wrote to Mr. Annis in connection with this?

A Yes, he did.

Q Have you ever reviewed the entire file with Mr. Gottlieb prior to the commencement of this proceeding?

A Yes.

Q Have you ever seen this before? (Handing Plaintiff's Exhibit 36 to the witness.)

A Yes, in reviewing the files.

Q There is no dispute as to the genuineness of this document, and so I introduce into evidence Plaintiff's Exhibit 36, for identification.

MR. KATZ: No objection.

(Plaintiff's Exhibit 36, received in evidence.)

Q Mr. Meier, I'm going to ask you to look at Plaintiff's Exhibit 37 and 38 and tell me if you have seen them before and under what circumstances?

A Yes, these I have seen in Basle. They were letters addressed to Mr. Thomann and Mr. Weitnauer, dealing also with the payment to Intercontinental. Here, mentioning the guarantee, guarantee by Mr. Kassin, Mr. Feldman and myself on Mr. Mortin Annis' paper.

MR. KOVNER: I offer Exhibits 37 and 38 for identification into evidence.

MR. KATZ: No objection.

MR. KOVNER: No objections to 37 and 38.

(Plaintiff's Exhibits 37 and 38, received in evidence.)

MR. KATZ: May it please the Court, I take it that there is no point at this stage, while these exhibits are being introduced for my calling to the attention of the Court, as would be the case if the jury was the tryer of

the fact, any particular point in any of these letters that we regard as significant. I take it the Court will view that himself.

THE COURT: I would think you could do that in two ways: If you're going to file post-trial briefs, you can point that out.

MR. KATZ: That's correct, Your Honor.

Q In Exhibit 37 the defendant states "First of all, this guarantee agreed to by three parties, Mr. Kassin, Mr. Feldman and myself."

A Yes.

Q Do you know to what the defendant was referring?

A That was obviously the second guarantee or the ammendment or the increase in the guarantee because--

MR. KATZ: If Your Honor please, I think that here we get into the possibility of exception, because the next sentence specifies what was being referred to and the next sentence is not being read. The witness is being led into an area which is inconsistent with the very same matter of the same letter. I don't know whether this is the appropriate time to bring this to the Court's attention, but I don't believe it is reasonable without adding one sentence.

THE COURT: I think that's correct.

MR. KOVNER: Let me rephrase the question and ask

the witness if he understands what was referred to by the following sentence in Exhibit 36:

"Q First, the guarantee is by three different people and there are very limited directions on this guarantee."

What guarantee do you understand this refers to?

MR. KATZ: This is 36?

MR. KOVNER: I have now asked on 36.

A The guarantee is for $150,000.

Q The guarantee as ammended?

A Yes.

Q Exhibit 37 I would like to read to you the first--the last three sentences of the first paragraph to accommodate or to deal with Mr. Katz's objection.

"First of all, this guarantee was agreed to by three parties, Mr. Kassin, Mr. Feldman, and myself. An amount of $40,000 as this was allocated to purchase an option to buy stock when the company went public. An additional $60,000 was credit given to the company. Any amount which was over $100,000 was jointly guaranteed by the three individuals."

Now, what was, to your knowledge, the defendant referring to when he speaks of the guarantee in this letter?

THE COURT: I don't understand. What difference does it make to your case?

MR. KOVNER: I simply want to establish, Your Honor, that the correspondence and all the communications between the parties, the defendant acknowledged and confirmed that he was on that--he was responsible for the second guarantee.

THE COURT: The point is that you have an exhibit, I gather, that purports to be signed by him and it speaks for itself.

MR. KOVNER: I withdraw the question.

MR. KATZ: You withdraw the question?

MR. KOVNER: I withdraw the question.

Q Mr. Meier, I ask you to look at Plaintiff's final Exhibit, Plaintiff's 39, and tell me if you have seen it before?

A Yes, that was received in the course of ordinary business in February and was brought to my attention.

MR. KOVNER: I would like to offer Exhibit 39 in evidence.

MR. KATZ: Yes, there is no objection.

(Plaintiff's Exhibit 39, received in evidence.)

Q Was this the first time that you or anyone else at Weitnauer received any information from the defendant that he was challenging the existence or validity of the guarantee, as I have previously defined guarantee?

A This was absolutely the first time.

THE COURT: What is "this"? I don't understand it.

MR. KOVNER: This exhibit which has been admitted into evidence. It's Exhibit number 39. And the challenge I'm--

THE COURT: I know what you're talking about by challenge, but I didn't understand what the word "this" meant.

MR. KOVNER: That's Exhibit number 39, which is admitted into evidence, in which the defendant states that he has never signed a guarantee with you. The letter being addressed to the plaintiff.

I ask, so as to clarify it:

Q Was there on any occasion prior to receipt of Exhibit 39 any reason to believe that the defendant had not assumed responsibility for the $150,000 guarantee as ammended?

A No, there was no reason at all.

Q Now, Mr. Meier, I just want to go back to the confusion relating to the draft of the September 30th guarantee for $100,000, and I want to show you Plaintiff's Exhibit 11 and Plaintiff's Exhibit 10 and ask you whether you have had the chance to examine both documents, how you first obtained both and under what circumstances?

THE COURT: Is Exhibit 11 the one that you decided--

MR. KOVNER: Yes, we withdrew its offer earlier.

THE WITNESS: May I look at the original as it is in Exhibit 12?

MR. KOVNER: Yes.

MR. KATZ: He didn't even--

MR. KOVNER: I'm going to show it to you. It's a carbon of the final form of the guarantee.

A All right. This was--

Q When you say "this" what do you mean?

A This exhibit, number 11, is the draft guarantee which I submitted on this dinner evening for signatures. Exhibit 40 is a true carbon copy of the Exhibit 14 which we received by mail from Intercontinental.

MR. KOVNER: I would like to offer Exhibit 11 and Exhibit 40 in evidence.

MR. KATZ: May we have the last question and answer read, Your Honor?

THE COURT: Surely.

(Whereupon, the last question and answer was read back by the reporter.)

Q Did you say that 11 was the actual document you delivered or a copy of the document you delivered at the dinner meeting?

MR. KATZ: This is putting words in the witness' mouth. The counsel is testifying.

MR. KOVNER: I think we have gone over that very issue before, Mr. Katz, and at great length. I think he has testified about it before and it is somewhat confusing. I think it is appropriate that it be clarified.

THE COURT: What was his answer? His answer is that this 11 was the document that was delivered?

MR. KOVNER: The draft that was delivered. He previously testified it couldn't be the actual one because it was folded and it had to be another document.

You brought that out on your voir dire this morning.

MR. KATZ: That's correct. Now you're summarizing it by saying that this is what?

MR. KOVNER: I think he answered yes and I think he said it was a copy.

MR. KATZ: I think his answer was it was a true carbon copy.

MR. KOVNER: Read back the answer to the first question because that's not what he said.

(Whereupon, the record was read back by the reporter.)

MR. KATZ: Well, I don't know what to do with

this other than to let it stand and then I will cross examine on it. That's about all I can do.

MR KOVNER: I offer Exhibit 11 and 40 into evidence.

MR. KATZ: I now object to the offer on the ground that both are incredible because Exhibit 11 that he's identified as the draft that he delivered. Is that correct?

MR. KOVNER: Copy.

MR. KATZ: Bears no folds and clearly are not carbon copies of each other.

THE COURT: If I understand his testimony, it was that this 40 is a carbon copy of 14 of the guarantee which was mailed to him, it was a carbon copy. This is a copy of a draft, Exhibit 11, the letter that he presented at the 21 Club .

Q Is that correct?

A Yes.

THE COURT: All right. I don't know the purpose for which 40 is being introduced. It seems to be a copy. I don't know what the purpose of it is.

MR. KOVNER: To clarify this situation, Your Honor. To eliminate any confusion concerning the circumstances of its execution.

THE COURT: As to 40, whatever objection it is, it seems to me it's cumulative, but the objection is overruled.

I'll allow it. 40 is admitted.

(Plaintiff's Exhibit 40 is received in evidence.)

THE COURT: I'll admit 11 and 12.

(Plaintiff's Exhibits 11 and 12 are received in evidence.)

MR. KOVNER: I wanted to complete an exhibit in July '69 by the addition of the credit note.

Do you have the credit note?

MR. KATZ: Yes.

(Handing.)

THE COURT: I think it's Exhibit number 12, isn't it?

MR. KOVNER: 7, Your Honor.

I have here the original of the letter which has now been produced. Should we give it another number, if that's October--

MR. KATZ: Why don't we call it 7A?

MR. KOVNER: All right. We'll mark this as 7A. If there is no objection, I will offer it in evidence. Even if there is an objection, I will offer it in evidence.

(Plaintiff's Exhibit 7A is marked for identification.)

MR. KATZ: That's our only copy. Can we substitute your copy for that one?

MR. KOVNER: The only copy I seem to have is the

copy that is annexed to one of your affidavits here. I just can't lay my hands on it. We will have all the exhibits back later and this one will belong to you since it has the "A" letter.

MR KATZ: The original is also ours.

MR. KOVNER: The original of both documents are yours.

Q Does Exhibit 7A bear your signature?

A Yes.

MR. KOVNER: I have no further questions of Mr. Meier.

THE COURT: All right.

We were going to take a break at 3:30, but since we are through with direct examination, we will take it now. We will resume at 3:35.

(Whereupon, a recess was taken.)

AFTERNOON SESSION

3:30 p.m.

THE COURT: All right.

MR. KOVNER: Your Honor, I don't know if this is the appropriate time. There is a very short amount of testimony relating to expenses of collections. I don't know whether you would prefer that at the conclusion of the case or whether--

THE COURT: Who is it going to be from?

MR. KOVNER: He will just testify briefly as to the expenses that have been incurred.

THE COURT: We might as well get all his testimony now.

F R I T Z M E I E R, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Cont'd)

BY MR. KOVNER:

Q Mr. Meier, have you had a chance to review the records of your company to determine what expenses have been incurred in connection with this guarantee?

A Yes.

Q What expenses were incurred by the plaintiff?

A There were two trips by Mr. Thomann and Dr. Zihlmann, and one trip of Mr. Thomann from New York. And the fees of

Dr. Zihlmann--

Q Who is Dr. Zihlmann?

A He is the attorney that we have in Basle. Totalling $7,000.

Q $7,000?

A Yes.

Q That covers the trips to New York, the expenses here, and the fees in Switzerland?

A Yes.

Q What fees have you been charged to date by your New York counsel?

A We have been charged by our New York counsel up to the 31st of March, $8,320.

MR. KOVNER: Your Honor, at the conclusion of the plaintiff's case tomorrow, we would like to put in the financial statement of legal costs, which is not available today but will be available tomorrow.

THE COURT: I don't understand it. The intention is that the persond guarantee included the cost of collections as well?

MR. KOVNER: Yes. The personal guarantee by its terms includes the cost of collections. We just want to complete it.

MR. KATZ: What was the name of that man in

Switzerland?

THE WITNESS: Zihlmann.

MR. KOVNER: Z-i-h-l-m-a-n-n.

CROSS EXAMINATION

BY MR. KATZ:

Q Did it ever come to your attention that there were any transactions taking place between Bankers Trust Company and Intercontinental or any of the principals of Intercontinental with respect to the financing of Intercontinental?

A What do you mean, transactions or correspondence?

Q Did there ever come to your attention that there were any dealings between Bankers Trust and these persons I have mentioned?

A Yes.

Q With relation to the financing?

A Yes.

Q Now, when was the first time that you heard anything about the Bankers Trust discussions with the Intercontinental people?

A Visit of April, Mr. Mortin Annis, Mr. Kassin, Mr. Radisch in Basle--

THE COURT: April of what year?

THE WITNESS: April, '69. And then we were called--no, that's not correct. That was another bank, I think.

Intercontinental dealt with another bank before. We were called to give an information on Intercontinental to Bankers Trust Union, April, '69.

Q Now, is there any correspondence in any of the files that you have here in the courtroom or any of the files that you have in New York that deal with those Bankers Trust discussions?

A Yes.

Q And will you look--do you have a file of that correspondence?

A We have, yes.

Q Now, will you look through that correspondence and tell us whether it refreshes your memory as to whether the first occasion when you had any knowledge about the Bankers Trust discussions was in fact in April of 1969?

MR. KOVNER: May I suggest that there is voluminous correspondence here, only a portion of which was introduced--

THE COURT: I didn't understand the question. The witness testified he learned of it in April, '69. You asked him to refresh his recollection whether it was April of '69.

MR. KATZ: I'm asking--I'll withdraw the question and ask him if there is anything that changes his recollection as to whether the first time that he learned about these

discussions was in April of 1969.

MR. KOVNER: May I request counsel to draw his attention to the correspondence he has in mind.

MR. KATZ: I don't know all of the correspondence in your file and this is why I'm inquiring.

MR. KOVNER: He will have to look at the entire file.

A The Bankers Trust correspondence is on March 4, 1970 in fact, not '69.

There was a lot of commercial correspondence with Intercontinental and not Mr. Annis. I cannot say when I first heard of Bankers Trust.

Q Tell us with reference to the April, 1969 conversation, visit, that you had with persons you have just mentioned, will you tell us who was present at those discussions?

A April, '69, present were Mr. Mortin Annis for part of the discussions and for the rest of the discussions, Mr. Kassin and Mr. Radisch.

Q And will you tell us what the substance of those discussions were?

A The substance was mainly commercial things, discussions regarding samples, discussions on prices, discussions on product, presentation, what we are going to do.

Q Did there come a time when you had any discussion

with any of the Intercontinental people with respect to the guarantees that any of the individuals were going to give to Bankers Trust so that Bankers Trust would extend credit to Intercontinental?

A It was a letter from Mr. Mortin Annis where he said that arrangements have been made with Bankers Trust for the financing of Intercontinental.

Q When was that letter written?

A September, '69.

Q Would you produce a copy of that letter?

A You have the copy in your file. It's the exhibit September 22nd with the personal statement of Mr. Annis.

MR. KOVNER: You're saying that was already introduced into evidence?

THE WITNESS: It was introduced already. I don't know the number. With the financial statement of Mr. Mortin Annis.

MR. KATZ: Can we see the one from the file that he has before him? He is now reading from the document.

THE WITNESS: It's that one with the financial statement.

(Indicating.)

MR KOVNER: That was introduced in evidence as Exhibit 10.

Q Now, referring to the financial statement of Mortin Annis which is annexed to Exhibit 10, was that theonly financial statement of Mortin Annis that you ever received?

A Yes.

Q You never received one subsequently to that, did you?

A No.

Q Now, did there come a time when you learned that the language used in Exhibit number 10, which speaks of "we have guaranteed an obligation to our New York bank for $100,000," referred to Bankers Trust Company?

A When I was here I had overall discussions with Mr. Kassin, Mr. Radisch, and I do not exactly recollect whether at that time it was Bankers Trust or another New York bank. It can be another New York bank.

Q Did you have any discussions with any of the personnel of that bank yourself?

A No.

Q At any time?

A No time.

Q Did you have any correspondence--

A We had exchange of letters in May, '70.

Q With the personnel of Bankers Trust Company?

A With Bankers Trust.

Q Will you produce that correspondence?

MR. KOVNER: If you have no objection, I'll look for it.

MR. KATZ: All right.

(Pause.)

MR. KOVNER: One exhibit is already in evidence. It's February 25, '70, and that's Exhibit 23. Then there's a letter of Mr. Annis.

Q Did you on or about February 11, 1970, receive from Bankers Trust Company any inquiries?

A Which period did you say?

Q I'm talking about February 11, 1970.

A Isn't that the answer to that inquiry on Bankers Trust?

Q I'm now looking for the inquiry.

Z What is the question? Whether we received an inquiry from Bankers Trust and you're looking for that inquiry?

Q Did you receive on or about February 11, 1970, an inquiry from Bankers Trust?

A Yes, certainly.

Q Where is that inquiry? Do you have that in the courtroom?

MR. KOVNER: I do not. I have not seen it.

A Bankers Trust inquired regarding Intercontinental with us.

Q Did they make any inquiry about the financial state of any of the people who were connected with Intercontinental?

A Look at our answer. That's what we answered them.

Q Which answer are you referring to?

A Copy of our letter to Bankers Trust.

Q Where is the letter to Bankers Trust?

MR. KOVNER: I have just handed it to you.

Q Now, under the date of September 27, 1969, Plaintiff's Exhibit 10, you wrote to Mr. Annis and you said to him that--I withdraw that.

You said you received from Mr. Annis a statement that four people, himself, Mr. Kassin, Mr. Feldman and his son, Mr. Annis' son, had guaranteed an obligation to the New York bank for $100,000?

A Yes.

Q Did there ever come to your attention any information as to whether the son, Mr. Annis, Jr., had withdrawn from that guarantee?

A Why do you ask me this question because this guarantee has nothing to do with Weitnauer. But to answer it, no

THE COURT: Answer the question. Don't argue with

him.

A No.

Q And did you ever at any time respond to the letter of September 22, 1969, indicating whether you were or were not satisfied with the guarantee of these people to Bankers Trust Company?

MR. KOVNER: I object to the form of the question, Your Honor. There was never any evidence in here that they were to be satisfied with a guarantee to Bankers Trust Company.

THE COURT: Mr. Kovner, Mr. Katz is ill and he is asking an excuse for it but you are not excused from the rules of the court.

MR. KOVNER: I'm sorry, Your Honor.

THE COURT: Point number two is I don't know what you're talking about. If it has an exhibit number, please let me know what exhibit you're referring to.

MR. KATZ: That's Exhibit 10, if Your Honor please.

THE COURT: Now I'm aware. Exhibit 10, as I recall, is the letter from Mr. Annis with his statement.

MR. KATZ: It's a letter which speaks of the guarantee to a New York bank.

THE COURT: All right.

Now, what is the question and the objection?

MR. KATZ: My question was whether, in substance, whether Weitnauer ever indicated that it was satisfied or dissatisfied with that guarantee; namely, the guarantee of these individuals to Bankers Trust.

THE COURT: All right, what is your objection?

MR. KOVNER: My objection was that that question assumes that Weitnauer was in some manner to be satisfied with the guarantee, to extend it to Bankers Trust, while the sole testimony is that they were asking for a sole guarantee in favor of themselves. It is a question that, in deference, may be designed to deceive the witness and I object to its form.

THE COURT: There is nothing wrong with the form of the question. I will let the witness answer it. I'm not sure of its relevance.

MR. KATZ: The relevance--may I speak to the relevance?

THE COURT: I'm going to let him answer it anyway.

A We had absolutely nothing to do with that guarantee. We asked for Mr. Mortin Annis, Sr.'s personal guarantee. That was the reason for coming to New York, and I repeat myself.

Q Well, in Exhibit 10 Mr. Annis suggested that he and the others--I'm summarizing and I don't have the exhibit

in front of me, might be willing to extend their guarantee to Bankers Trust another $50,000 in order to enable shipments made by Weitnauer. Did you in any way respond to that suggestion? Did Weitnauer respond?

A Can I see Exhibit 10?

THE COURT: Yes.

(Document handed to witness.)

MR. KATZ: I'm going to withdraw the question and rephrase it.

Q In that letter, Exhibit 10, Mr. Annis says that he is willing to extend the guarantee to cover the shipments in question so that merchandise could be started flowing across the ocean immediately.

Now, my first question to you is, did you at any time indicate whether Weitnauer would or would not be satisfied with that extension in order that the merchandise start being shipped across the ocean immediately?

A We have not to answer because Mr. Mortin Annis had not had to give an answer to our request of his personal guarantee. That has nothing to do with the personal guarantee which we asked for.

Q Please answer the question. Did you respond in any way to this offer to extend the Bankers Trust guarantee?

A No.

Q And when you read Exhibit 10 and saw that it referred to the shipments in question, what shipments did you think it was referring to?

A All the shipments which we had to guarantee.

Q On behalf of Intercontinental. Is that correct?

A On behalf of Intercontinental.

Q Now, up until the time when you handed Mr. Annis at the 21 Club the proposed draft of guarantee that Mr. Gottlieb had prepared, had there been any discussion between you or anybody on the part of Weitnauer and Mr. Annis with respect to this guarantee; namely, the guarantee referred to in Exhibit 10, to Bankers Trust?

A No.

Q And up to that time when you met at the 21 Club and after you received Exhibit 10, was there any further discussion of the terms of the guarantee?

A No. I handed the guarantee draft over, which had all terms included.

Q Now, when for the first time did you issue any instructions to Mr. Gottlieb or anybody in his firm to prepare a guarantee for Mr. Annis to give to you with respect to Intercontinental's obligation?

A When I was in New York. The date of the meeting is the 23rd, 24th, 25th, which was either a Tuesday or Wednesday;

I went to Mr. Gottlieb's office to have the guarantee prepared on Thursday or Friday.

Q And did you give him any memorandum or writing which contained or summarized the terms of the guarantee that you were requesting he prepare?

A No. We gave that verbally.

Q Did you or anybody else at Weitnauer to your knowledge discuss the question after the receipt of Exhibit 10 whether Weitnauer would or would not be satisfied to accept a New York bank guarantee or assurance of payment?

A The question was never discussed.

Q It was never discussed?

A No.

Q Where were you when you received Exhibit 10?

A At the New York Hilton.

Q And you had a telephone conversation with Mr. Thomann sometime after receiving Exhibit 10?

A Yes. I went for this purpose to New York, and I gave the highlights of Mr. Mortin Annis' financial statement to Basle and say are we satisfied? Yes, we are satisfied and proceeded with the guarantee.

Q You did that by telephone?

A Yes.

Q With Mr. Thomann?

A Mr. Thomann and Mr. Weitnauer.

Q I just want to clarify something which confused me at the time you were testifying. You testified that Mr. Thomann was also in New York?

A Yes.

Q Was that at a different time than this September 22nd period?

A You can look in my passport. I arrived on Thursday, Mr. Thomann went with me to Lake Success to look at Intercontinental and left either on Thursday or Friday.

Q Which was what date?

A 19th or 20th. I arrived on Thursday, the 17th. So you're on Friday, the 20th, and the meeting was the 24th, either Monday evening, 21 Club, or Tuesday evening.

Q When you say the meeting, you mean the meeting that took place after the 21 Club?

A Pardon?

Q When you say the meeting, are you speaking of the meeting that took place at the 21 Club?

A Yes.

Q And thereafter you called Mr. Thomann in Switzerland?

A No, before the meeting at the 21 Club.

Q So that it was between the 22nd and the 24th?

A Between the 22nd and the 24th.

Q And you say that in your conversation you inquired of him whether he thought that the financial statement as given to you by Mr. Annis was adequate. Is that correct?

A That's correct, yes.

Q And that you did not discuss with him the statement in Exhibit 10 that Mr. Annis was proposing to extend his existing $100,000 guarantee to the bank to cover the shipments in question?

A Never a question of mixing such a guarantee.

Q Did you discuss that with--

A No, I didn't discuss it.

Q You didn't discuss--even mention it?

A I didn't even mention it.

Q You mentioned that you first me Mr. Annis in May of 1968 and that he was working for General Cigar. Weitnauer had some business with General Cigar at that time?

A Yes, a long time.

Q And there was a business reason relating to the business of General Cigar for your meeting with Mr. Annis?

A Yes.

MR. KATZ: May I see Exhibit 1, please?

Q I ask you to look at Exhibit 1, and in particular, at the portion of page 2 which speaks of the effective

expenses of Mr. Annis and Weitnauer and speaks of the remaining balance being shared 50-50.

A Yes, sir

Q Will you now look at Exhibit 15. Now tell us whether it was set up in Exhibit 15 reflecting those expenses or the 50-50 split?

A No. Nothing set forth in this letter.

Q With respect to either the expenses or the split?

A Either the expenses or the split.

Q And will you look at Exhibit 15 and tell us what portion of it, if any, refers to the net profit or the net loss on the transactions?

A You can't see that on this ledger, except the 4% attributable to Intercontinental as such.

Q With respect to the portion attributable to Mr. Annis, the 50-50 split, and the expenses and also the net profit, is there anything in this exhibit that would show you those figures?

A There was never any profit on the agreement. Would you like us to draw up a loss account?

THE COURT: Mr. Meier, answer the question, please. If you can answer the question yes or no, please do so.

THE WITNESS: Yes, Your Honor.

Q Now, with respect to certain of the items that are

listed in Exhibit 15 they were furnished by your own distillery, were they not, by a Weitnauer distillery?

A No.

Q Do you have interest in Tuxedo Scotch Company?

A We own the brand--the trademark.

Q And was Tuxedo brand made especially for you, Weitnauer?

A Yes.

Q And was some of the merchandise shipped to Intercontinental?

A Yes.

Q Did it include the Tuxedo brand whiskey?

A Yes.

Q And on those transactions in Tuxedo brand are you saying that there were no profits made at all?

A They came all under the agreement.

Q My question is--

A No profits.

Q --were there any profits made on the sale of Tuxedo Scotch Whiskey?

A No profits made.

Q You made no profit at all?

A No.

Q So that the sale to Intercontinental was at whatever

it cost you?

A Yes.

Q When you sold to Intercontinental--I'm talking about Weitnauer--did you receive any commission on the sale?

A According to--when we received the sales commission was deducted in our reinvoicing to Intercontinental.

Q So that the listing of prices that's listed in Exhibit 15 includes a commission to Weitnauer. Is that correct?

A Includes a commission to Weitnaeur, yes.

Q What is the rate of that commission?

A Ten percent, sometimes eight.

Q And in what column of Exhibit 15 is that ten percent or eight percent included?

A It's not shown in that ledger. It's a separate calculation.

Q There is some separate ledger that shows that percentage?

A Not here.

Q Pardon me?

A Not here.

Q Where is that ledger?

A I must look in Basle. But I can look whether I have it with me.

Q Could it be determined by taking ten percent or eight percent of any particular column in Exhibit 15?

A Yes.

Q Which column would that be?

A Only on an invoice by invoice basis does that.

Q Could that be calculated by you here today?

A I have two invoices here, proofs and shipment. You can look at these if you like.

Q Those are the only ones on which you can tell whether you got the ten percent or the eight percent?

A I can prepare anything you like. I just have to have it sent here.

Q Are you certain you don't have it in New York?

A No.

Q Now, that commission that you received would be a profit to Weitnauer, would it not?

A Under the agreement, yes.

THE COURT: The commission you're talking about is the ten percent mark-up, I gather. The agreement between Intercontinental and Weitnauer, is that correct, of which four percent was to be credited to Intercontinental and then three percent divided between Annis and Weitnauer?

MR. KATZ: That's almost correct, but not completely correct because the ten percent was supposed to be ten percent,

as I understand it--is it correct to say, Mr. Meier, that the ten percent was ten percent of the invoices?

A Supplier's--your question really goes to thepoint of whether it's calculated within 100 or on top of 100. Now, I think the suppliers' price on the invoice was increased by ten percent.

Q And the figure which included the increased ten percent appears in this column of Exhibit 15?

A In the column "Debit," total invoices of Weitnauer.

Q What would--which number column is that or what is the German word, soll?

A Soll, s-o-l-l.

Q And in what portion of Exhibit 15 is the four percent listed that you say Intercontinental was entitled to?

A It's listed as the last item dated July 15, 1971, $6,390.46; which if you calculate on a roughly $160,000 turnover accumulated as within transactions of a percent four percent.

Q Now, that four percent was calculated on the total sales?

A Total sales.

Q Pardon me?

A On total sales, yes.

MR. KATZ: I think we will have to see the original

exhibit because you will remember there was a controversy as to this exhibit because we did have the signature on the front of the page.

MR. KOVNER: All right.

(Handing.)

Q Let me see if I understand you correctly. The final figure that appears on Exhibit 15, $171,158.60. Was that the total amount of all of your purchases for and sales to Intercontinental?

A Are the $6,390.46 deducted? I can't see it from here.

Q Suppose I give it to you.

(Handing.)

A This figure represents the total sales which we make to Intercontinental less their payments, plus the interest right up to the end of 1970.

Q What do you mean by the interest rate?

A The calculated interest at a rate of 9%.

Q And added that to the amount that you had actually invoiced to Intercontinental. Is that right?

A We have invoiced, yes.

Q Now, in addition to the sales commitments on Tuxedo Whiskey, did you also receive sales commissions from other suppliers?

A If there were any toll deducted.

Q I'm sorry, I didn't understand your answer.

A All deducted when reinvoicing.

THE COURT: I want to be sure. Do I understand that part of the commission you received from Tuxedo has been deducted from Exhibit 15?

THE WITNESS: We also started from the net purchase price and increased by 10%.

Q That's what you showed on Exhibit 15, the increase of 10%?

A 10% increased amount.

THE COURT: That means on Tuxedo, you deduct your commission, whatever you got from that, but increase it 10%. Is that correct?

THE WITNESS: Yes, Your Honor.

Q Were there othere suppliers, other than your purchase of Tuxedo, who supplied the products and paid you 10% or 8% commission?

A And paid us 10% or 8% commission?

Q Yes.

A No.

Q You simply charged that 10% or 8% commission in your invoices to Intercontinental. Is that correct?

A That's correct.

Q Now, were there occasions when you bought liquors or whiskeys or other alcoholic beverages and either rebottled them yourself or had them rebottled?

A Yes.

Q And what among those items did you ship some of that merchandise to Intercontinental?

A Your question applies only to Tuxedo, which was bottled for us.

Q I'm talking about other than Tuxedo, were there any instances which you purchased alcoholic beverages and had them rebottled for you?

A No.

Q Were there instances in which you purchased--

A Sorry. Raffles, R-a-f-f-l-e-s, Scotch, especially asked for by Intercontinental which we had to bottle for them.

Q Which you had to what?

A Bottle.

Q Now, what part of the invoices shown on Exhibit 15 were those items constituting Tuxedo Whiskey?

A I would guess 15%.

Q Did you say 15%?

A A guess, I must say. I can't read it from the ledger.

Q There is no record in this courtroom that establishes that fact, is there?

A Yes, there is one.

Q There is one?

A Yes.

Q Where is it?

A In my briefcase.

Q Will you produce that, please?

A Yes.

MR. KOVNER: While the witness is looking for the document, I must say I'm questioning the purpose of this line of questioning since the underlying indebtedness from Intercontinental to Weitnauer has been admitted in the pleadings.

THE COURT: Has that been conceded in the pleadings? My assumption is that it had not been. If it has been, that's something else. I assumed that the line of questioning was to establish if there was any indebtedness it was less than $150,000.

MR. KOVNER: Here is a copy of a set of marked pleadings, Your Honor.

MR. KATZ: Paragraph 8, that's been admitted.

MR. KOVNER: I think it's 7, 8 and 9 have been admitted, and 8, of course, is the relevant one. So that even though the precise amount is not pleaded, it's alleged

to be between $150,000 and $174,000 and at the time the complaint was filed they didn't have the updated ledger which has now been introduced and I think it winds up at 171, but that really doesn't relate to the issue.

THE COURT: As you probably know, Mr. Kovner, we conform the pleadings to the facts. And if Mr. Katz can establish that the indebtedness--by proof that the indebtedness is less than that he is entitled to do it.

MR. KOVNER: I just hadn't realized that that was the position of the defendant, Your Honor, and I was questioning the purpose of it.

MR. KATZ: My position is that even under the allegation--

THE COURT: I understand your position, Mr. Katz. You need not explain it to me. Proceed.

MR. KATZ: Is there a pending question?

THE COURT: Yes, Mr. Meier is looking for a document which he said was in this courtroom, which I gather will indicate the percentage of Tuxedo Scotch that's involved in Exhibit 15. I gather that's what it is.

THE WITNESS: Your Honor, ready.

Total sales to Intercontinental, $175,000, off which Tuxedo invoiced $15,419, less than 10%.

Q Now, we come to what was the other brand, Charro Roga?

A Raffles Scotch. Included in that because it's the same supplier.

THE COURT: That's included in the $15,000?

THE WITNESS: That's included in the $15,000, yes.

Q Now, were there any other transactions listed on Exhibit 15 on which an addition was made to the price that Weitnauer was charged in the invoice to Intercontinental?

A What do you mean an addition was made?

Q Was Intercontinental charged more in any other instances than you have just described, or invoiced for more than Weitnauer had been charged?

A Did I say Intercontinental was charged more? Did I say that? Absolutely not.

THE COURT: He didn't say that. He got commission on Raffles and Tuxedo; that whatever commission they received was deducted from Exhibit 15, and 10% was added. That's what I understood his testimony to be.

Is that correct?

THE WITNESS: Your Honor, these two products were the two products which were bottled for Intercontinental. In other words, bought in bulk, bottled with material which was bought separately. Three operations: buying the product, buying the bottle, labels, stoppers, corks, paying the bottler for his actual work, and sending it. All the rest

of the products was bought as it was resold.

THE COURT: That doesn't answer the question.

THE WITNESS: The cost plus was made, cost plus 10%, if that answers your question.

Q And is it correct then, as His Honor just summarized, that the cost items to which you have just testified was an item which already had deducted from it the commissions you had received?

A Yes.

q Q Now, you refer to an item of 9%.

A Yes.

Q Was there some discussion about that 9%?

A It was discussed verbally.

Q By whom?

A Mr. Kassin. Or Mr. Radisch and myself when being in New York--no, sorry, I couldn't have discussed when being in New York because at that time we did not think that Intercontinental would overgrow. It was discussed either in April or July when they came to see us.

MR. KATZ: May I have that original exhibit again?

MR. KOVNER: The ledger?

MR. KATZ: No, the agreement with the signatures. Oh, I have it.

Q Well, can you tell us whether that interest item

was discussed before or after the execution of Plaintiff's Exhibit 1, which is the October 16, 1968 agreement?

A It was discussed after.

Q And who was present at the discussion?

A Mr. Kassin, Mr. Radisch, myself. Mr. Meniconi also.

Q And of course you are aware that Exhibit 1 contains no reference to that interest item?

A Contains no reference?

Q To that interest item.

A Yes.

MR. KATZ: I think that's the exhibit we were to get back to at the end, the one relating to the convertible bonds.

MR. KOVNER: Yes. 7A.

MR. KATZ: I think it's 7A.

MR. KOVNER: Here you are.

(Handing.)

MR. KATZ: Thank you.

Q Now, you recall that Mr. Kovner questioned you at some length about the fact that for a prolonged period of time you did not know what the conversion ratio between the bonds and the stocks were to be. Do you recall that testimony?

A Yes.

Q There came a time when you did know that?

A Yes.

Q When was the first time that you learned what the conversion ratio was to be?

A When we issued the debit note --the credit note.

Q Now, I ask you to look at Exhibit 7A and in particular at the credit note and I ask you to look at Exhibit 15. I'm going to hand them both to you and ask you whether the $40,000 shown in the credit note is reflected in any way in Exhibit 15?

A No, it's not reflected. It's not reflected.

Q Now, is there anything in Exhibit 15 which would tell you what the amount was that was paid by Weitnauer to each supplier for each of the invoices?

A Not in Exhibit 15 but in this ledger.

(Indicating.)

Q In other words, Exhibit 15 doesn't show what Weitnauer paid, it simply shows what Weitnauer invoiced to Intercontinental. Is that correct?

A Correct.

Q Now, you're referring to these papers and I ask they be marked for identification.

These are some new papers introduced by this witness.

THE COURT: Have your assistant or someone get the papers and have them marked.

MR. KATZ: Yes, Your Honor.

(Defendant's Exhibit A is marked for identification.)

THE WITNESS: I should have a photostat because it's the only one I have.

Q I would like to see them.

A Yes.

(Handing.)

THE COURT: Mr. Meier says that's his only copy. So I think what ought to be done at the close of this hearing today is to have photocopies made of them and have them substituted.

MR. KOVNER: Yes, Your Honor.

Q Now, referring to the paper marked Defendant's Exhibit A for identification, will you look at it and tell us first of all whether it's a record kept in the ordinary course of the business of Weitnauer?

A No, it's a record made especially to--it's a record made when we credited the 4% to Intercontinental, $6,390.46.

Q Was that record kept in the ordinary course of business of Weitnauer?

A In the ordinary course of the business, yes.

Q And does this come out of some other book or document?

A This comes out of suppliers' invoices, our invoices to Intercontinental.

Q Now, there are some headings in German at the top and I would like you, if you will, to--from left to right translate those for us.

(Handing.)

A I write it on here. That's WTC order number, Intercontinental's order number, the order date, the supplier, the supplier's invoice net amount, our invoice to Intercontinental.

Q Is that your invoice number or your invoice amount?

A This is the amount. The number is column number one.

Q This is your invoice amount, the one you're now reading?

A Yes. Then you have either ten or eight percent cost plus column. Then you have out of these ten or eight was, is attributable to Mr. Annis right now, six or four. Then you have 4% for Intercontinental, all accumulated.

I would translate also this one, clarification.

Q Which one is that?

A At the end. The next word is until 3rd of October, 1969, 10% on all items, after readjustment on wine only and

10% for the rest.

Q Now, is there anything in Exhibit A which indicates the amounts that were actually paid by Weitnauer on the suppliers' invoices?

A No.

Q Is there in existence a record showing what amounts were paid on the suppliers' invoices?

A Not here, but I have two invoices here.

Q You have only two invoices here?

A Yes.

Q Of this list of 46 invoices, is that correct?

A Yes.

Q Do you have any knowledge of your own as to whether there were any instances in which the amount paid to a supplier was less than the amount listed in Exhibit A as a supplier's invoice?

A Certainly for Wilson Bonding. Wilson is a supplier which supplied 8% of the total value Raffles and Tuxedo Whiskey. Now, if you take the invoices of this supplier which supplied the whiskey only you have to add the gross, you have to add for the corks, you have to add for the capsules, for the labels, for the cartons, so I must present you with a whole calculation which would be about six or seven different items, inclusive of storage charges.

Q Other than that were there, as far as you know, any instances in which, at the time this action was begun, the full amount of the suppliers' invoices had not yet been paid by Weitnauer to the supplier?

A All are paid.

Q And what record is there of that payment?

A We could present you in Switzerland the original documents regarding the payment, and we have documentation here from all suppliers that have been paid for.

THE COURT: Mr. Katz asked a question, following another question which I thought was directed to that but it was not.

Do I understand your testimony to mean that the invoice, that you paid the amount that the supplier asked in terms of its invoices as reflected on Defendant's Exhibit A; except for those items of Tuxedo and Raffles which you had to bottle and added costs of your own; therefore, you paid less or there appears less?

THE WITNESS: Yes.

THE COURT: That was the question I thought he asked.

The second question--not the second question, but the second facet, you're also saying that you paid all of the suppliers the amounts that were indicated, you paid them?

THE WITNESS: Yes, Your Honor.

THE COURT: All right, we will adjourn until tomorrow at ten. The case will adjourn until tomorrow morning at ten o'clock. Do you think we are going to be able to finish this case tomorrow?

MR. KATZ: I don't think so, Your Honor.

THE COURT: Well, we're going to have to. We're going to have to move it at a greater speed than we had today.

MR. KOVNER: The plaintiff's case will not be substantially more. We have no more exhibits.

THE COURT: On the theory that we have finished I have scheduled a trial to begin on Thursday morning. I was told that we would be through with this case in less than two days.

MR. KATZ: If Your Honor please, I'm sure Your Honor recognizes the facts of trial life, which is that a defendant's proof is largely dependent upon the proof that the plaintiff puts in. And this plaintiff has gone into some extensive proof which is unanticipated. Consequently I hope that the defendant will not be prejudiced by the time pressure.

THE COURT: The defendant is not going to be prejudiced by the time pressure, but I'm expecting the defendant

to cooperate with the Court in terms of pushing this case along. I'm aware of your condition, and I'm very sympathetic, but I can't tolerate these long pauses. This case has been proceeding as if we had two weeks and we don't.

MR. KOVNER: Two previous points before we adjourn; one, there has been a number of questions in connection with Exhibit A, and I don't think it was introduced in evidence and I believe it was intended to be so.

THE COURT: It was only marked for identification. That can be done tomorrow.

MR KOVNER: In order to abbreviate time tomorrow to ask Mr. Katz to stipulate that a member of our firm and a member of the Gottlieb firm would testify accurately to the time charges incurred by their firms in connection with the legal expenses on this case and that that testimony would reflect records charged in the ordinary course of business?

MR. KATZ: You mean the $7,000 he testified to?

MR. KOVNER: The American legal fees that haven't been put in yet. I would like a stipulation, if you're willing to do so, that you will accept a statement as to the full amount of those legal fees.

MR. KATZ: You mean statement by your firm?

MR. LANKENAU: These would be copies of records.

MR. KATZ: I'll accept those.

THE COURT: All right, we'll adjourn and take a short recess.

WEITNAUER TRADING COMPANY, LTD.,

Plaintiff,

-against- 71 Civ. 782

MORTIN L. ANNIS,

Defendant

October 10, 1973
10:00 a.m.

(In open court.)

THE COURT: All right, Mr. Katz, let's proceed.

F R I T Z M E I E R, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. KATZ:

Q Mr. Meier, in the course of your dealings as a purchasing agent in the liquor business, has it come to your attention that there frequently occur breakages en route which therefore do not reach the destination?

A Breakages?

Q Breakages en route of shipments of liquor.

A There are, but I wouldn't say frequently.

Q Pardon me?

A There are, but not frequently.

Q They occur occasionally?

A They occur occasionally.

Q And also does it not occur that en route there are, or upon delivery it is discovered that the merchandise itself, the liquor has gone bad and is required to be returned to the supplier?

A Practically not.

THE COURT: In any event, Mr. Katz, what has this to do with the problem? You're not suggesting, are you, that if there is a guarantee that Weitnauer would have the responsibility of recovering this from the supplier. It seems to me that Intercontinental, if that's so, that Intercontinental has its rights to recover those from the suppliers. It has nothing to do with the guarantee, does it?

MR. KATZ: I don't think that's a fact as a matter of fact, Your Honor. I think as a matter of fact I can develop it.

Q As a matter of fact, is it not the case that in the instance of breakages en route it is the shipper who has the responsibility of recovering from the insurance company and giving the consignee a credit for the merchandise. Is that not the case?

A No. For this the insurance is there.

Q And who does the insurance company pay?

A Pardon?

Q Who does the insurance company pay?

A The one who claims according to the insurance policy.

Q Which in the case of--

A The consignee.

Q Which in the case of certain shipments could be the consignor?

A That's an exception.

Q It occurs?

A When he has covered the insurance, yes.

Q Now, suppose the merchandise is defective.

A Yes.

Q And in this particular case before the so-called guarantee that you're talking about was delivered at the 21 Club, 12% of the merchandise shipped had already been rejected as broken, unsalable, or shortages in shipments. Is that not the case?

A Not.

Q It's not the case? You have a definite recollection to that effect?

A Yes.

THE COURT: I thought that this guarantee covered shipments that occurred after, after it was sent.

MR. KATZ: That's true. We are now canvassing

the question of whether these shortages occur and as to whom they are charged to.

THE COURT: Yes, but you asked the question as to what occurred before the guarantee was signed. I thought that all of this guarantee covered things after, subsequent to that date.

MR. KATZ: That's true, but does that not reflect on whether this occurs as a matter of fact in the industry?

THE COURT: If you have any facts on it you ought to give the facts, Mr. Katz. If anything like this has occurred I think you ought to have the facts on it.

MR. KATZ: I will develop the facts. I have a case. I'm on cross examination.

THE COURT: Develop the facts. You're asking suppositions. If you have facts, ask him facts.

MR. KATZ: I did ask him a fact and he answered no and I'm going to test it in my own case.

THE COURT: I would prefer you test it in your own case from the beginning. That's what I'm concerned with, your case.

MR. KATZ: Will this witness be directed to remain here during my case? I would like that he be directed.

MR. KOVNER: We will so agree.

Q And at the 21 Club meeting was there not a

discussion of the fact that the instances of broken, unlabeled and short shipments was discussed among Mr. Feldman, Mr. Annis, and yourself?

A I can't remember. But if so, present any claim, present it to the underwriters of the insurance. That's the easiest thing which we have in our daily work, regularly, present your claim. There are forms available with the customs agent everywhere and you get paid from the insurance.

Q Does that apply to unsalable merchandise?

A Unsalable, not.

Q Now, on September 24, 1969, or the 25th, whichever date it was at the 21 Club, when you presented the proposed guarantee to Mr. Annis, he didn't sign it, did he?

A No, he didn't.

Q What did he do with it?

A In the hotel room the people, Mr. Mortin Annis, Sr., Mr. Mortin Annis, Jr., Mr. Kassin, Mr. Feldman, Mr. Radisch, got together on one side of the room and had a discussion among themselves, of which I could not understand what they discussed.

Q You say you could not understand why they didn't sign it?

A They say we will have further discussion among ourselves and will get legal advice on it and come back to

you later.

Q And at the time did they not say that the reason--one of the reasons that they couldn't contemplate signing any such document was that there was no credit for damaged goods in view of the 12% experience on the prior goods?

A No.

Q And did they not say that there was in that document no right for--no recourse for the guarantor with respect to unsalable merchandise?

A No.

Q And did they not say in that discussion that there was no credit reflected for the $40,000 of bonds purchased by Weitnauer?

A No.

Q They said nothing about those things?

A Nothing about that.

Q Is it accurate then, according to your testimony, to say that what they did was they simply wanted to discuss it with their attorneys?

A And among themselves.

Q And among themselves. Now, after that occasion at the 21 Club how many days was it that you left, after that that you left, the country?

A Latest, two days after.

Q And do you know if, or did anybody tell you at that time what Mr. Annis was going to do, whether he was going to remain in New York or leave the city?

A No.

Q He didn't say anything like that?

A No.

Q Did you see Mr. Annis again before you left the country?

A No.

Q Did you make any effort to see him?

A No.

Q Was there any discussion at that time about the fact that the only guarantee that Mr. Annis had ever discussed in writing with you, with Weitnauer, was the guarantee that had been proposed by Mr. Annis as outlined in Exhibit 10?

A Can you repeat the question, please?

(Whereupon, the pending question was read back by the reporter.)

A No discussion.

THE COURT: Is that the guarantee of Bankers Trust?

MR. KATZ: That's the guarantee with Bankers Trust, yes. That's the guarantee that was in excess of

$100,000 that had been guaranteed to Bankers Trust.

Q What was your answer?

A No discussion.

Q Now, I ask you to look at Exhibit 10--(handing)--my question to you is, referring to the guarantee that's described in Exhibit 10, do you know if a copy of Exhibit 10 was sent to Adolph Weitnauer by Mr. Annis?

A Yes.

Q Was it?

A Yes.

Q Now, there's no doubt in your mind, is there, that the only financial statement that was every given by Mr. Annis was given in connection with Exhibit 10?

A Yes.

Q There is no doubt?

A No doubt.

Q Now, when you left New York on the 27th of September, 1969, you had not yet read or signed any guarantee by Mr. Annis. Is that correct?

A I have not yet read or signed.

Q Any guarantee by Mr. Annis?

A No.

Q And you hadn't seen any guarantee that Mr. Annis had signed?

A No.

Q And the only guarantee that you had seen in writing other than the one proposed at the 21 Club, the only one you had seen described was the one that was described in Exhibit 10. Isn't that so?

A That's not the guarantee.

Q I say the only guarantee that you had seen described is the one that was described in Exhibit 10?

A Yes. And the discussions which we had regarding our guarantee.

Q That's right, those were the only two you had ever heard of, but did you ever see one described in writing other than those two?

A Yes--no other one.

Q And so far as you knew at that time when you left New York, Weitnauer, the plaintiff, had not at that time received any signed guarantee by Mr. Annis?

A No.

Q Your answer is yes, it had not received any?

A It had not received any, yes.

Q Did you at any time before you left New York inquire of Mr. Gottlieb if he had received any telephone call or letter or other communication from Mr. Annis about the guarantee?

A No, I didn't inquire.

Q And after September 27, 1969, did you have any correspondence with Mr. Annis which dealt with the terms, the provisions of the proposed guarantee?

A No, I had not any correspondence with the terms of the guarantee.

Q There came a time when you received a letter--a telegram, from Intercontinental, Exhibit 12, which told you that the guarantee had been signed. Is that right?

A Yes.

Q Did you have any discussion with anybody at Intercontinental before you received that telegram--

A No.

Q Wait aminute, I haven't finished my question.

(Continuing)--which dealt with the terms of the proposed guarantee?

A No discussion.

Q When did you receive that document, which is Exhibit 12?

A We received that document on October 1st.

Q And it was dated September 30th, so you received it a day after it was dated. Is that right?

A Correct.

Q Now, when you later received Exhibit 13, which

purports to be a telegram from Mr. Annis--excuse me, yes, Exhibit 13, which purports to be a telegram from Mr. Annis, when did you receive that?

A This I received, according to the stamp of wire office, Basle, on October 8th.

Q And did you question in your mind at that time how it happened that a telegram was sent to you about the same subject matter as Exhibit 12, and that that telegram was sent more than a week afterwards?

A No, I didn't question.

Q There was no question in your mind as to why it was that you didn't receive a letter instead of a telegram, why a telegram was necessary?

A I couldn't care less. A telegram is as good as a letter.

Q Even though it's a week after you received information that the event had occurred?

A Mr. Annis was heavily engaged in his General Cigar business. After a Sunday in between, which makes two other days, absolutely normal.

Q And when you received Exhibit 13--will you look at Exhibit 13.

A Yes.

Q And you saw the words in it "Presented (a.c) to your lawyer, assume no further difficulties. Advise." Did you

then consider calling Mr. Annis and saying, wait a minute, we don't have to present it to our lawyer and there are no further difficulties because we were told that this guarantee has already been signed?

A No.

Q You didn't think of doing that?

A No.

Q Did you communicate with Mr. Gottlieb after you received Exhibit 13 and--

A No.

Q --ask him if there were any further difficulties or whether the signed document had been presented to him?

A We were notified before that he has received the signed document.

Q By Mr. Gottlieb?

A By Mr. Gottlieb, yes.

Q What paper are you referring to that indicated that notification?

A We got first a cable from him, "Have received agreement." Secondly, the letter sending the signed guarantee.

Q May we have it, please?

MR. KOVNER: They are not in evidence. I will look for them.

(Pause.)

THE COURT: Mr. Katz, let's proceed while he is looking for that.

MR. KATZ: Excuse me?

THE COURT: Let's proceed.

MR. KOVNER: Here it is, Your Honor. This appears to be the original letter sent to Mr. Thomann. I'll show it to Mr. Katz.

(Handing.)

MR. KATZ: Yes, I offer as Exhibit B this document just produced as dated October 1, 1969.

(Defendant's Exhibit B, marked for identification.)

Q Now, Exhibit B in evidence refers to a telegram. Do you have that telegram? Do you have any knowledge as to the person or persons from whom Mr. Gottlieb received either the telegram or Exhibit B?

MR. KOVNER: Show him the document.

MR. KATZ: All right.

(HAnding.)

THE COURT: Mark the second piece of paper as well.

MR. KATZ: Let's mark the second one as C for identification.

(Defendant's Exhibit C, marked for identification.)

A The only--to answer your question, the only

information I got is what Mr. Harry Gottlieb writes, "We are now enclosing the said guarantee agreement. You will note that it's unsigned by Messrs. Annis and Kassin, and the third line is left blank. Mr. Kassin explained to me that he wanted the agreement out as soon as possible and was satisfied, if you are, with having just the two of them guarantee payment."

Q How does that help your recollection or information with respect to who it was that presented it to Mr. Gottlieb?

A I don't know.

Q Then there came a time when you received Exhibit 14. Is that not so?

A Yes.

Q That's the document that--one of the documents that you're now suing on?

A Yes.

Q Did you receive that undercover of any letter?

A Under the cover of Mr. Gottlieb's letter of October 1st.

Q Is that an exhibit number?

A B.

Q Now, this firm of Wickler, Gottlieb, of which Mr. Gottlieb was a member, are your attorneys in this case right now, are they not?

A They are, yes.

Q And is Mr. Gottlieb alive?

A Yes.

Q And well?

A Yes.

Q I believe you said in your direct testimony that with respect to the so called ammendment increasing the guarantee by $50,000, you said that Mr. Annis wanted Kassin and Feldman to sign the guarantee also. Is that correct?

A Yes, correct.

Q Was that the first time that Mr. Annis had expressed a desire to have either Mr. Kassin or Mr. Feldman sign the guarantee in addition?

A Yes.

Q He had not made any such requests earlier?

A No.

Q Now, do you know what the circumstances were under which the draft that you had presented to him, to Mr. Annis, at the 21 Club which called only for his signature, was changed to include the signature of Ronald Kassin and another signature line?

A I do not know the circumstances.

Q And when Mr. Annis said to you, as you have testified, that he wanted both Kassin and Feldman to sign the so

called ammendment in addtion to himself, you know, did you not, that Kassin, or you believed, did you not, that Kassin had already signed the first guarantee?

A We knew it, yes.

Q And when you received Exhibit 20, which is the second guarantee dated January 14, 1970, from whom did you receive that?

A From Intercontinental.

Q And was there a covering letter?

A No.

Q You simply received the document without any covering letter?

A Yes.

Q I ask you to look at Exhibit 19. Now, Exhibit 19 recites that you had cabled to Intercontinental and that they are prepared to increase the guarantee. Do you have a copy of that cable here?

(Mr. Kovner handing to Mr. Katz.)

MR. KATZ: Is this already an exhibit?

MR. KOVNER: That was introduced at the deposition. I have seen it before. As to where the cable itself is, I don't know.

Q Will you look at this cable and tell us when you received it.

THE COURT: Have it marked, please.

(Defendant's Exhibit D, marked for identification.)

A It's not very visible here, the receipt stamp. But I interpret that the cable was--because it was a cable, was sent from Lake Success on the 8th of January. So it was received certainly the 9th or the 8th of January.

MR. KATZ: Here is a clearer copy of the cable. That's the original cable that we received. The receipt date is clearer on that copy.

(Handing.)

Q Now, look at the original of Exhibit D for identification and see if that refreshes your memory as to when it was received.

A 13th of January. So may assumption that these abbreviations are the date are not correct.

Q Now, you must have misunderstood my question because my question was do you have a copy of the cable, and I prefaced it by saying Exhibit 19 says, "You cabled to Intercontinental and they said they are prepared to increase the guarantee." And my question is, do you have a copy of your cable to Intercontinental?

A That was not a cable, it was a letter. They refer, "Your letter of January 6th."

Q May I see a copy of that exhibit?

THE COURT: That's a copy of the exhibit you have in your hand.

MR. KATZ: I want to look at the date which is not in my hands.

Q So that in Exhibit 19 when you said, "when cabling them," this is your letter of December 19th, you were in error, you did not cable them, you wrote to them?

A Yes.

Q And where is the letter which you wrote?

MR. KOVNER: I think you have that, Mr. Meier.

THE WITNESS: I have that letter?

MR. KOVNER: Yes.

THE WITNESS: I will look for it.

(Pause.)

(Witness hands document to Mr. Katz.)

MR. KATZ: May we have this document, which is dated January 6, 1970--I offer it in evidence.

THE COURT: Any objection?

MR. KOVNER: No.

(Defendant's Exhibit E, received in evidence.)

MR. KATZ: I now offer in evidence either as Exhibit D-1 or as a separate exhibit, the original of the telegram where a photocopy was introduced as Exhibit B.

MR. KOVNER: No objection.

207A

THE COURT: Mark it as D-1.

(Plaintiff's Exhibit D-1, received in evidence.)

Q Now, look at Exhibit, if you will, 19, which reads "When cabling them, they answered that they are prepared to increase the guarantee from $100,000 to $150,000. Before finally answering could you please give us some more information."

What additional information were you requesting from Mr. Annis?

A I referred back to the discussions of November 20th and the letter of November 4th, and wanted Mr. Annis to give the informations which were discussed, the guarantee and the outcome of his negotiations with Mr. Kassin and Mr. Feldman, which he wanted to sign the guarantee together with Mr. Annis.

Q Now, Exhibit 19 is dated January 13, 1970. Did you thereafter receive these additional informations that you were requesting from anybody?

A Yes. From Mr. Mortin Annis, Exhibit 21.

Q And referring to Exhibit 21, is that the only information that you received from Mr. Annis in response--or to whom you believed to be Mr. Annis, because there is a dispute--in response to your letter of January 13th, Exhibit 19?

A With a direct deference to this letter, yes, the

only answer we got.

MR. KATZ: May I have the question and answer read, Your Honor?

THE COURT: Yes.

(Whereupon, the pending question and answer were read back by the reporter.)

Q Now, in Exhibit 21 you referred to a financial statement. What financial statement were you requesting at that time?

A You have asked the same question yesterday. I have answered it.

MR. KOVNER: I object, Your Honor. Exhibit 21 was written by Mr. Annis, not by Mr. Meier.

THE WITNESS: Yes.

MR. KATZ: All right, I'll withdraw the question.

Q What financial statement did you understand he was referring to when he said "would be ready very shortly"?

A I have answered this question yesterday.

Q I don't recall the answer and perhaps we will save time if you answer it now.

A It was the financial statement of Messrs. Kassin and Feldman, and/or a total financial statement of Intercontinental.

Q Now, in Exhibit 21 the date appears January 19th.

Do you have any way in which you can determine when it was received by you?

A I must repeat myself what I said yesterday. The receipt probably January 23rd, 25th.

Q Now, on January 23rd or 26th when you say--

THE COURT: He said 23rd or 25th.

MR. KATZ: Excuse me, I misheard him.

Q On January 23rd or 25th when you received Exhibit 21 and you read the language, "I am certainly in agreement to raise this to $150,000," did you at that time consider writing to him and saying, wait a minute, you have already signed a document of January 14th which agreed to raise it to $150,000?

A No.

Q You didn't consider writing to him in that respect at all?

A No.

Q I take it the answer is no?

THE COURT: He said no, Mr. Katz.

A No.

Q Now, did you have any correspondence with Mr. Annis as to whether he was referring to the bank guarantee or to the paper that's marked Exhibit 20?

A No. Our letter of November 4th to Mr. Annis says,

"Mr. Kassin asked Weitnauer Trading for an additional credit of $30,000. We informed Mr. Kassin that for this purpose we would need the same engagement signed by yourself and Mr. Kassin, as this was done for the $100,000 for which we already possess the guarantee."

So subsequently in the visit of the 20th of November this was discussed at length and there were no uncertainties as to what it referred.

Q But you had in your hands, according to your testimony, on or shortly thereafter January 14, 1970, the so-called ammended guarantee which was increased to $150,000. And then approximately up to the 25th, sometime between the 23rd and the 25th, you received a letter saying, "Which purports to be from Mr. Annis, saying that he is in agreement to do that."

Did you not consider saying to him, you have already done so?

THE COURT: You asked that question before and the witness answered. His answer was no.

A May I correct his answer? In so far as the letter of February 5th, with copy to Mr. Annis, "the whole matter has been thoroughly discussed within the board of our guarantee of the extended guarantee. $50,000 additionally which you have sent us recently and your statement," and so on.

Q What the date of that?

A February 5th.

THE COURT: Is that an exhibit?

THE WITNESS: That's Exhibit 22.

I repeat no, no uncertainty to what it refers.

Q Now, to whom did you write that letter?

A To Intercontinental. Copy to Mr. Annis.

Q You never replied directly to Mr. Annis himself, from whom you received the inquiry?

A Which inquiry?

MR. KOVNER: I'm sorry, I object. I don't know what inquiry you're referring to.

MR. KATZ: Exhibit 21.

MR. KOVNER: Is there any inquiry in there?

MR. KATZ: I'll withdraw the question.

Q From whom you received Exhibit 21.

A In the course of ordinary mail.

Q I say did you reply to Mr. Annis?

THE COURT: The question was you never replied to Mr. Annis directly, did you?

THE WITNESS: We never replied to Mr. Annis directly.

MR. KATZ: Now, if Your Honor please, both my assistant and Mr. Annis have been doing some research

overnight, which I'm told was completed at about two o'clock. I'd like a five minute recess to go over their notes and see if further cross examination is warranted.

THE COURT: All right. We will recess until 11:00.

(Whereupon, a brief recess was taken.)

MR. KATZ: You may examine.

REDIRECT EXAMINATION

BY MR. KOVNER:

Q On this issue of the convertible bonds which has been discussed, was there ever an understanding with respect to the term of the bonds, the length they would fall due?

A No, there was no understanding.

Q Were there other terms of these bonds that had not been worked out between the parties?

A The period of conversion was not worked out.

Q Any other terms?

A And the--period of conversion and interest, for instance, was not worked out.

Q Was there a sinking fund set aside to secure these bonds?

A Not worked out.

Q Had the bonds ever been issued?

A Never been issued.

MR. KOVNER: Your witness.

RECROSS EXAMINATION

BY MR. KATZ:

Q Mr. Meier, is it not the fact that on his visits to Switzerland Mr. Annis would frequently meet with Mr. Adolph Weitnauer at his home without you being present?

A He met but I don't know how frequently. Mr. Annis has to tell.

Q You knew they were pretty close friends, didn't you?

A Yes.

Q You knew that Mr. Annis did meet with Mr. Adolph Weitnauer at his home on occasions?

A Mr. Annis must tell.

Q Pardon me?

A Mr. Annis must tell.

Q Well, I'd like to know whether you knew at that time that Mr. Annis and Mr. Weitnauer met at Mr. Weitnauer's home on occasion.

A I was never personally notified, but I assumed.

MR. KATZ: Now, if Your Honor please, this redirect examination has just caused the occasion for me to look for some documents that I saw last night in the course of my preparation. I will have to take a moment to produce those

documents.

(Pause.)

Q I show you a paper dated May 19, 1969, and ask that you identify it.

(Handing.)

THE COURT: Mark it for identification.

(Defendant's Exhibit F is marked for identification.)

A This is a letter addressed to a Western Union cable, addressed to Weitnauer in Basle, referring to convertible bonds.

Q Was that received by Weitnauer in the ordinary course of its business?

A Yes.

Q And does it deal with the subject of the terms of the $40,000 credit?

A $30,000 credit.

MR. KATZ: I offer that in evidence.

MR. KOVNER: No objection.

(Defendant's Exhibit F, received in evidence.)

Q Now, please look at Exhibit 7A.

A Yes.

Q Now, Exhibit 7A refers to Telexes of May 20th and 22nd, 1969.

A Yes.

Q Will you produce them?

MR. KOVNER: What dates?

A May 20th and May 22, 1969.

Q May 20th and May 22nd, yes.

MR. KOVNER: Here is May 20th.

(Handing.)

From whom to whom?

MR. KATZ: It just says, "As per telex of May 20th and May 22, 1969."

MR. KOVNER: These are the three Telexes in that period we have. I don't see any date of May 22nd, though. Maybe one of them was received May 22nd.

MR. KATZ: I now offer in evidence--

Q I show you a paper which bears the stamped endorsement of 20 May, 1969, and ask you to identify it.

(Defendant's Exhibit G, marked for identification.)

A What is the question?

Q Please identify that document.

A This is the received copy of the Exhibit F.

Q May I see it?

A Yes.

(Handing.)

A Can I have a look again?

Q Yes.

(Handing.)

A The text of Exhibits F and G are almost identical, but Exhibit F is signed Mortin Annis. Now Exhibit G, which is the receipt of this Western Union cable is signed Annis only. And the words "4001" which is the zip code in Switzerland are missing.

MR. KATZ: I offer that document in evidence.

MR. KOVNER: No objection.

(Defendant's Exhibit G is marked in evidence.)

Q I now show you a paper dated May 19, 1969, and ask you to identify that. (Handing.)

(Defendant's Exhibit H is marked for identification.)

Q Please identify that.

A That is a Western Union telegram addressed to Weitco in Basle. This is the original of Exhibit F.

Q May I see that?

A Absolutely.

(Handing.)

Same papers, one a copy, one an original.

MR. KATZ: Your Honor please, may we substitute Exhibit H for identification for Exhibit F in evidence?

THE COURT: All right.

MR. KATZ: Pardon me?

THE COURT: It's all right with me, of course.

MR.KOVNER: I have no objection to that, Your Honor.

217A

Q I now show you a paper which bears a date May 20, 1969, and ask you to identify that one.

(Defendant's Exhibit H is marked for identification.)

A That is a photostat of a Telex which Weitnauer sent to Mr. Annis in Tampa on May 20, 1969.

Q Does it deal with the subject of the convertible bonds?

A Convertible bonds.

MR. KATZ: I offer that in evidence.

MR. KOVNER: No objection.

(Defendant's Exhibit H is received in evidence.)

Q I now show you a paper bearing the initials T.M. at the top, or T.M.X., and ask you to identify it.

THE COURT: Mark it first, please.

(Defendant's Exhibit J, marked for identification.)

A This is a copy of a Telex received by Weitnauer on or about--confirming, signed Annis, that $40,000 of convertible bonds are available. "Will write you in detail that date. Regards."

MR. KATZ: I offer that in evidence.

MR. KOVNER: No objection.

(Defendant's Exhibit J, received in evidence.)

Q And was there any writing in detail or otherwise which dealt with the subject of convertible bonds after your

receipt of this exhibit J?

A Yes, my letter of July 3rd in which the credit note, Exhibit 7A, was enclosed for the convertible bond and afterwards mentioned in various letters that we have not received the convertible bonds. Constant reminders.

Q Now, will you look at that last exhibit, which is Exhibit J, and translate for us, the handwritten language at the bottom.

A Handwriting says, "Cable to Intercontinental, May 22, '69, and letter to Intercontinental May 22, '69, as agreed with Mr. Thomann," and my signature.

Q Were you present when any discussion of these bonds, which was referred to in the language "as agreed," was had?

A That was on the April 24th, 25th meeting in Basle when the question came up. I was partly present because Mr. Annis had discussions also with other people without my being present.

Q And did the other people include Mr. Thomann?

A Included Mr. Thomann, yes. And as you said, it was in Mr. Weitnauer's private home.

Q I show you this paper dated May 19, 1969, and ask that you identify it.

(Defendant's Exhibit I, is marked for identification.)

A This is a Western Union form not addressed, having

a message with the signature Weitco, which is the cable address of Weitnauer.

Q Dealing with the subject of the convertible bonds?

A Dealing with the convertible bonds.

Q Was that received--was that sent by Weitnauer in the ordinary course of its business?

A Yes.

MR. KATZ: I offer it in evidence.

MR. KOVNER: No objection.

(Defendant's Exhibit I, received in evidence.)

MR. KATZ: You may examine.

MR. KOVNER: No further questions, Your Honor.

THE COURT: All right, Mr. Meier, thank you. You may step down.

(Witness excused.)

MR. KOVNER: The plaintiff wishes to call Mr. Hilton.

MR. KATZ: Mr. who?

MR. KOVNER: Hilton.

O R D W A Y H I L T O N, called as a witness on behalf of the plaintiff, having first been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KOVNER:

Q What is your address, Mr. Hilton?

A 6 North Star Drive, Morristown, New Jersey.

Q What is your occupation?

A I'm an examiner of questioned documents, probably more commonly known as a handwriting and typewriting expert.

Q Where is your office located?

A 15 Park Row, New York City, with laboratory facilities. I have other laboratory facilities in my home at Morristown, New Jersey.

Q Will you summarize briefly your professional qualifications, including your general education and special training for this work.

A My general education was obtained at the North Western University in Evanston, Illinois, where in 1935 I received a Masters--I'm sorry, a Bachelor of Science degree in the field of mathematics and physics. After being out of school for a year I went back to the University and studied for one year and received a Master of Arts degree in mathematical statistics in the spring of 1937.

About a year and a half after that I was appointed to the Chicago Police Crime Laboratory staff to be trained as the staff document examiner. In other words, to be

trained in the field of handwriting and typewriting identification as well as other questioned document problems. It was at that laboratory that I received my basic training in this field of work that I have been engaged in for the last 35 years.

I ultimately was appointed to the position as staff document examiner after about a year or training, and continued in that capacity until late 1941, when I was called to active duty by the United States Navy under a Naval Reserve Commission just prior to Pearl Harbor, and was assigned to naval intelligence duties in the 9th Naval District in Chicago, Illinois. These duties had me designated as a handwriting identification specialist. And for approximately two years during the war years I remained in such primary assignment.

Then for the balance of the war years and until I was released from active duty in the spring of 1946, I was assigned as primary duties an administrative officer in various stations, shore stations of the Navy, and handwriting problems became purely subsidiary duties.

In 1946 I was released from active duty by the Navy, I came to New York City, and I became associated that summer with Eldridge W. Stein, who had maintained a practice, consulting practice in this field of work, examination of

documents. Mr. Stein and I worked together in a partnership arrangement for approximately five years until his retirement in 1951. And since that date I have been maintaining the practice alone at the same location.

However, in the last two and a half years I have been in the process of training an associate who is now working with me in that capacity.

My general specialized training in this field has been first at the Chicago Crime Laboratory, where I not only read and thoroughly studied various texts and the English language but worked on a number of special problems where results could be verified. But over the course of years this education has continued. It's continued in the years when I worked with Mr. Stein and we were able to discuss procedures that had been part of his work for 30 or 40 years, and to compare them with techniques that I was using, and this was a great opportunity to learn.

I had been a member of the American Society of Questioned Document Examiners since 1944, and as a member of this organization one of the requirements is participation in the annual meeting. I have participated in these meetings, prepareing special research papers in some instances, survey papers in others, and in all cases having the opportunity to consult with fellow workers in the field who are

active in this field throughout the country, both in private practice and in Government service.

This gives a general survey of my--some of my professional activities that pertain particularly to my training and experience.

Q Thank you.

Have you testified on previous occasions as an examiner of questioned documents in court?

A Yes.

Q Have you testified on previous occasions in the Southern District of New York?

A Yes, I have, on a number of occasions.

Q Have you testified recently?

A Yes, the last--well, until I was able to come up to this courtroom, I have been testifying in the Federal Court downstairs.

Q In this building?

A Yes.

Q In another matter before the Court?

A Judge Weinfeld.

Q Would you name someof the other courts in which you have so testified?

A I have testified in the Federal Court system throughout the eastern part of the United States and also in the

Canal zone. I have testified in State courts, particularly in New York state, in the State Supreme Court and in lower courts, the Criminal Courts, and in the Surrogate Courts and in the courts of Connecticut, New Jersey, Pennsylvania; most of the states along the eastern seaboard. Of course in Illinois and Indiana, both when I was with the Police Laboratory and since then, since I have been in private practice.

Q Are you a member of any professional societies whose membership is made up of men engaged in work similar to yours and would you name some of these.

A I mentioned the American Society of Questioned Document Examiners, of which I have been an active member for a great number of years. I am also a fellow in the American Academy of Forensic Sciences and a member of the Questioned Document Section of that academy. That academy includes a total of close to 1,000 members and they are in various disciplines, including criminalistics, work done in police laboratories, medical examiners, toxicologies, and so on, and a group of about 100 questioned document examiners.

Q Are you a member of the Editorial Board of North Western School of Law?

A Yes.

Q Now, Mr. Hilton, I show you Plaintiff's Exhibit 14, which has been marked in evidence, and which on the third

page bears two signatures, Ronald Kassin and Mortin L. Annis, Sr. Have you made an examination of the Annis signature before coming to this court?

A Yes.

MR. KATZ: Excuse me, which document are you referring to?

MR. KOVNER: Exhibit 14, September 30th.

MR. KATZ: The original?

MR. KOVNER: The original.

Q Now, I show you a series of admitted signatures.

MR. KATZ: Would you identify--

MR. KOVNER: I will identify which ones.

Q Which have been admitted in evidence in this case. Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5, and I'm omitting Exhibit 6 since there was some question raised on counsel's voir dire on that one. Exhibit 8, Exhibit 9, Exhibit 10. I'm omitting Exhibit 21 since that's also been challenged. Exhibit 23, Exhibit 24, Exhibit 25, Exhibit 26, Exhibit 30, Exhibit 31, Exhibit 34, Exhibit 36, Exhibit 37, Exhibit 38, and Exhibit 39.

A Yes.

Q You have made an examination of all these signatures prior to coming to court. Is that correct?

A I have, yes.

Q And have you compared them with the signature on Exhibit 14?

A I have.

Q As a result of your examination and comparison do you have an opinion as to whether or not Mortin L. Annis, Sr., signed the signature on Exhibit 14?

A I do.

Q What is your opinion?

A It's my opinion that the Mortin L. Annis who signed the various documents that you have shown me--in other words, all of the documents you have shown me except Exhibit 14, is the writer who signed over the typewritten signature Mortin L. Annis, Sr., on Exhibit 14.

Q In the course of your examination did you have occasion to make any photographs of any of the writings which I have shown you?

A I did.

MR. KOVNER: I would like to have these photographs marked for identification. I will offer a set to my adversary. There are two sets of signatures, Mr. Katz.

(Handing.)

When this is marked perhaps we can give this to Your Honor.

THE COURT: What's the number?

MR. KOVNER: It will be Plaintiff's 41 and 41A.

(Plaintiff's Exhibits 41 and 41A, marked for identification.)

Q I show you Exhibits 41 and 41A and ask you to tell the Court what they are, how they were made, and whether or not they are correct photographs of the material contained in them.

A Could I ask one question? Which is 41 and which is 41A?

Q 41 is the one that headed by the September 30th signature of '69, which is on Exhibit 14, and 41A is headed by the signature on Exhibit 21, which I will ask you about subsequently.

MR. KATZ: 40 is the short one?

MR. KOVNER: 41 is the short one and 41A is the longer one.

A Referring first of all to Exhibit 41, short one, at the top of this exhibit is the signature--is reproduced the signature from Exhibit 14, which is the September 30, 1969 document.

THE COURT: Let's deal for the moment--I don't think we have laid down a foundation for 41A. Let's deal with 41.

MR. KOVNER: I'll hold 41A.

THE COURT: 41A, as I understand it, is Exhibit 14

which Mr. Hilton says he has compared with all these other admitted signatures and they were signatures of 14. The others are by the same writer.

MR. KOVNER: I'm missing one document. I'm going to ask my adversary if he has a copy of an affidavit filed in opposition to the motion for summary judgment, since the signature on that affidavit is on 41 and I have not shown it to the witness and I'm missing it. I want it before him as he testifies.

MR. CORWIN: I can give you a copy of it.

MR. KOVNER: That will be all right.

Q Now, I believe I was asking you, Mr. Hilton, how these photographs were made. And before I offer 41 into evidence--

A I'm referring to Exhibit 41 now, and the photographs or the signatures that are reproduced in this photograph, starting at the top, is first the signature from Plaintiff's Exhibit 14, September 30, 1969 document. Immediately below that is the signature from the affidavit in this case that Mr. Annis signed on the 10th of December, 1971, according to the date on it. Following that is the signature to the letter of January 18, 1971, which has been marked Plaintiff's Exhibit 36. And immediately below that a January 18, 1971 letter which has been marked Exhibit 37.

MR. KATZ: I'm sorry, I missed the last one.

THE WITNESS: The last one, this is the third signature in the second panel which is from Exhibit 37, January 18, 1971, the letter to Mr. Thomann.

Now, in the next panel we have a signature to a letter of July 30, 1970 which is Plaintiff's Exhibit 26 in evidence. Immediately below that the signature to a letter of September 22, 1969, which is Plaintiff's Exhibit 10. And finally, on the last short panel at the very bottom, which is marked "Notes," which is the heading on this document, Plaintiff's Exhibit 1, the signature that appears on page 2 of it.

Now, I made all of these photographs myself. They are enlarged photographs of the signatures in question. They are enlarged 1 and 3/4 times original size. They are in black and white, but otherwise they are correct and accurate photographs of the material contained in them.

MR. KOVNER: I offer Plaintiff's Exhibit 41 in evidence.

THE COURT: I think to make this complete, that affidavit ought to be marked. I know it's part of the case but you should mark it for this purpose as an exhibit.

MR. KOVNER: May I have marked the affidavit in opposition--

THE COURT: Call it 42.

MR. KOVNER: In opposition to the motion for summary judgment as Exhibit 42, and I would--

MR. KATZ: We need an original. That appears to be a photocopy.

MR. KOVNER: That's your photocopy. The original is on file.

(Plaintiff's Exhibit 42, marked for identification.)

MR. KATZ: Your Honor please, if we are going to have an expert testify on signatures, I think the original rather than a photocopy ought to be used.

MR. KOVNER: The expert testified that he made his enlargement from the photocopy, so there is no dispute and presumably you can draw that out on your cross examination of the expert.

MR. KATZ: I'm objecting on the ground that if the purpose of comparison, a comparison with a photocopy is not a comparison with an original signature and therefore is secondary evidence.

MR. KOVNER: Your Honor, if the original is here I think that could obviate it.

THE COURT: The point is that--

MR. KOVNER: He made a copy of a photocopy and he can give his opinion as to his signature.

I would then ask in lieu of this to have the original and this photocopy to be marked as 42 and 42A.

THE COURT: Well, I think what needs to be done is to inquire of--

MR. KATZ: You're now offering Exhibit 41?

MR. KOVNER: Let me offer 42 and 42A initially and then I'll offer 41.

42 and 42A I ask to be marked, and they are the original of your affidavit, which was in his Honor's file, and the 42A is the copy which your associate had just handed to me.

MR. KATZ: May I have a voir dire, if Your Honor please?

(Plaintiff's Exhibits 42 and 42A are marked for identification.)

MR. KOVNER: I would object to a voir dire of this witness as to the admissibility of 42 and 42A because I think that would go as to 41, Mr. Katz, since these came from known sources independent of this.

THE COURT: I think that's correct.

MR. KOVNER: I offer 42 and 42A into evidence.

MR. KATZ: This witness has never testified that he--as I understand it, that he compared the original, 42, with anything.

THE COURT: That's correct.

MR. KATZ: Therefore it is not identified. Consequently, I object upon that ground. He never, unless my understanding of his testimony is incorrect--

THE COURT: It will be admitted. It has been submitted to this Court as the signature of Mr. Annis. There is no objection on that. That's overruled.

MR. KATZ: It's the signature of Mr. Annis, but this witness has never compared it.

THE COURT: I understand it. In issue now that has to be settled before there is a voir dire is this: You can inquire or Mr. Kovner can inquire as to whether he can make a valid identification from the photocopy.

MR. KATZ: Does that same ruling apply to Exhibit 41?

THE COURT: Exhibit 41, only one of the signatures on Exhibit 41 is from the photocopy. The other signatures on 41 are blowups of documents which have been admitted. The only one there is question about which is the photocopy, which is the number two document on 41.

I think what Mr. Hilton has to determine or find out is whether he can make any valid identification, not having seen the original document.

MR. KOVNER: May I confirm that 42 and 42A have been

marked in evidence.

THE COURT: 42 is the original and 42A is the photocopy.

MR. KATZ: Meanwhile, I would like to have my associate look at the exhibits which are said were compared.

(Plaintiff's Exhibits 42 and 42A, received in evidence.)

Q Mr. Hilton, in connection--before I offer 41 in evidence I just want to ask you how you prepared the blow-up of the signature--the second signature on Exhibit 41.

A The second signature on Exhibit 41 was a photographic enlargement made exactly in the same way that all of the other original signatures were made, but it was made from a photocopy of Exhibit 42. And actually that particular photocopy was photographed at the same time as the two signatures immediately below it, so that the photographing process, as far as those three signatures on that panel, were done simultaneously and under exactly the same conditions.

Q Can you make a judgment with respect to the comparisons, as to which you have testified, from examining a photocopy and an enlarged photocopy of a signature that is admitted?

A This can be done readily if the photocopy is of good quality. The one that I had originally examined was

of good quality. And now that I have seen Exhibit 42 here on the witness stand I recognize that the copy was accurate and shows good detail in it. This is what I had originally determined from looking at the photocopy and from my experience with them, that it was perfectly satisfactory for my examination. Otherwise I would have discarded it and done without it in my study.

MR. KOVNER: I offer Exhibit 41 into evidence.

MR. KATZ: I object upon the ground that it includes a comparison with a photocopy.

THE COURT: Objection overruled.

(Plaintiff's Exhibit 41, received in evidence.)

Q Mr. Hilton, I'm going to ask you about 41A before I ask you to explain your opinion, and I would first like to ask you--I first show you Plaintiff's Exhibit 21, the letter of January 19, 1970, on the letterhead of Mortin L. Annis, Sr. Have you made an examination of the signature to this letter before coming to court?

A Yes, I have.

Q Have you compared this signature with the varous known signatures of Mortin L. Annis, which was shown to you previously?

A I have.

Q As a result of this examination do you have an

opinion as to whether or not Mortin L. Annis signed this document?

A I do.

Q What is your opinion?

A It is my opinion that the writer who signed Plaintiff's Exhibt 21 is the same writer who signed the various known signatures that have been shown to me here on the witness stand.

Q In the course of your examination did you have occasion to make any photographs of the writings which I have shown to you?

A I did.

Q I show you Exhibit 41A for identification and ask you to tell the Court what it is, how it was made, and whether or not it is a correct or contains correct photographs of the material set forth thereon?

A I have a copy of Exhibit 41A before me, and again these are enlarged photographs, enlarged 1 and 3/4 times the original size of the signatures. 41A is made up of the signatures from the following exhibits: at the top in the first panel, which I have marked with the word "Questioned," the letter of January 19, that's the signature from Exhibit 21.

Then below that, among the known signatures, the

first one is a letter of February 19, 1971, which has been marked Plaintiff's Exhibit 39. The one below that, the second one in the second panel marked with the same date along the left margin, comes from Exhibit 38, the signature on Exhibit 38.

The next signature, marked December 16, 1970, is a letter which has been marked Plaintiff's Exhibit 34. Immediately below that is a letter of October 13, 1970, and that signature comes from Exhibit 30. We move on to the next panel and a letter marked June 9th--the way my set is assembled--

Q We do know the number of June 9th,

A Yes, I have it here. A letter of June 9, 1969, which is marked Exhibit 5. Beneath that a letter of April 7, 1969, which is marked Exhibit 4, signature from that letter.

Immediately below that a letter of November 16, 1970, which is marked Exhibit 31.

Then in the following panel is the signature of a letter of June 19, 1970, which is found on Exhibit 25. The following signature of February 25, 1970, appears on a letter marked Exhibit 23. Immediately following that is the signature from a letter dated August 20, 1969, Exhibit 9. Following that, the last one in that particular panel,

July 10, 1969, from Plaintiff's Exhibit 8.

Finally, the signature at the bottom, which is from a letter of October 25, 1969, appears on Exhibit 2.

Q That's '68, I believe.

A '68, I'm sorry, I misread that. That's Exhibit 2.

So that describes the particular exhibits from which each one of the signatures in Exhibit 41A occurs. I made all of these photographs myself. They are enlarged, they are accurate photographs in black and white, of the signatures that I have described.

MR. KOVNER: I offer Exhibit 41A into evidence..

While your associate is looking at that I would like to question with respect to 41 if you have no objection.

MR. KATZ: No objection.

Q I ask you to look at Plaintiff's Exhibit 41 and ask you if that chart is necessary for you to explain fully the reasons for the opinion which you have expressed?

A It is.

Q Would you please explain those reasons?

A Well, I have stated in respect to Exhibit 41 and the signatures contained in it principally that the signature on Plaintiff's Exhibit 14, which is in question, is a signature written by Mortin L. Annis who signed the other documents in evidence in this case. Actually all of the

documents, but in particular the ones that I have included in Exhibit 41.

I have included these known signatures in Exhibit 41, rather than including all of them, simply because these signatures represent a full signature or a fuller signature, I should say, than the signatures found on the varous other known exhibits. In the other signatures, the signature is greatly abbreviated and apparently constitutes only portions that could be interpreted as being the first name.

However, in these signatures some of them contain sufficient strokes to interpret indicating they intended to be Mortin L. Annis, while others do not display any writing that can be interpreted as the middle initial, merely the first and last name.

Mr. Annis, as I see his writing in these known signatures, has a very distinctive and highly visualized signature writing. It not only is characterized by almost an abbreviated form, but it also is characterized by contracting and making the letter forms in such a way and with such visualty, that if one didn't know how the signature was spelled he would have great difficulty, I feel, as one who has only seen Mr. Annis' signatures through this examination, of interpreting what the signature was intended to be.

However, there are certain fixed habits within this

signature and there are also very definite variations. It's a rapidly written signature which can be seen from a study of the structure. Also from the high degree of variation that occurs within the signature. It varies from the signature that appears on the affidavit in which we have portions of the first name and a very clearly made letter that has a form that, in my opinion, can well be interpreted as a capital A followed by a slurring stroke and a dot, which must incorporate the balance of the Annis name.

It includes other signatures such as Exhibit 26, farther down, in which there is an ending flourish on this signature that is quite different than any of the other signatures. It includes signatures in which, as, for example, in Exhibit 10, where we see in the middle portion of the signature a form that can be clearly interpreted as a capital L.

So that while the affidavit is--affidavit's signature is written without any attempt to include the L, some of the other signatures do include it. In all instances the ending of the signature is a waving or curving line off to the right. That with only two exceptions doesn't even contain an "i" dot for the "i" in Annis.

As I say, these signatures are written freely. They have varying designs of the initial stroke as we look



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through the genuine signatures, but the stroke is relatively long, it curves down and then there is a retracing coming up on the right side or coming up, and then another arch down on the right side.

If this writing is intended to be a capital M even part of the capital M has been omitted because normally in the English writing we find the second arch stroke besides the initial beginning stroke to constitute a full M.

MR. KATZ: Excuse me, are you referring to a particular exhibit right now?

THE WITNESS: I'm referring to all of the known signatures when I described this. However, the affidavit signature and the signatures or the signature on Exhibit 18 best fit this description because in these two signatures we do have the retracing of that long initial down stroke which follows the relatively long or initial beginning stroke.

Then there is a form--the pen goes off and it forms the next pointed character, and this comes down and swings back to the left and forms a small loop. Depending on the signature, the next one has a loop and it has a retracing at the one side. It then swings across into the final part of the signature.

Now, this can be interpreted as a "t" within the signature. So that by this interpretation I come to the

conclusion that a portion of the capital M and the capital T of Mortin will be written. This is an analysis without any consultation with the writer as to what he really intended. These two forms seem to fit that description. They are consistent in the signature, taking into account that we do have the variables.

Now, this is exactly what we have in the signature on Exhibit 14, going this far within the signature. We have a very light, extremely light beginning stroke, coming up from the typewritten line over to the left of the typewritten M of Mortin. It goes up very lightly, up into that heavy line and then turns down, retraces part way up and you have the second arch that I described in the known signatures.

In other words, in the signature at the Exhibit 14 on the top, the second portion of that first form is like the second portion of the form on the affidavit signature immediately below. It's related to the movement that we find in the other signatures as well.

More specifically, it still is like the form that we find in Exhibit 36, so that we have three guarantee signatures, 14, and 42 and 36 follow the same pattern.

The pen wrote very poorly on the signature on Exhibit 14. This was determined from microscopic study. The form that I described is a "t" form coming up on the left side to

a point, and a slight retracing down. When it reaches the typewritten line it swings off to the left and there is a small loop.

Notice the strong similarity between this form and the form on the affidavit signature.

On the very last signature from Exhibit 1, October 6, 1968 signature. In these forms they are similar, but the affidavit signature alone has the stroke coming up on the left side and coming down. I shouldn't say alone because that happens in 36 as well. But it has that, and the boot that we find in Exhibit 14.

The other signatures, some of them don't have the loop, or as I referred toin Exhibit 1, there the upstroke comes up and is over what ultimately becomes the down stroke, forming a loop on the righthand side of the letter and coming down.

On 10 and 26 the upstroke and the down stroke retrace themselves for a long area. So the variables go, but we have that same motion, and the precision of it is slightly different.

The variables are important in this signature. In other words, the signature on Exhibit 14, as far as the first two characters are concerned, fits into the pattern very well.

Following the "t", and I'm speaking about the questioned signature now, we have a form that can be interpreted as a capital "L" with a reasonably large upper enclosure with a smaller lower enclosure. That follows right in in continuous writing, following up to the top as high as any of the strokes go, coming down with a slight curve and with a small loop and then swinging into the final form. This type of "L" is written into three of the signatures, the signature on Exhibit 37, the signature on Exhibit 26, and the signature on Exhibit 10. In each of these instances the upper and lower forms take on slightly different characteristics as compared to one another and they work out a pattern that fits around the pattern of Exhibit--the signature on Exhibit 14.

Well, in part they run into the letters that surround them. They are not out in the clear as much as they are in Exhibit 14.

Finally, the last letter in Exhibit 14, that is the last tall letter, doesn't take on the form of an "A" such as we find clearly in the affidavit, Exhibit 42, or in 36, but rather takes on a form such as we find following the "L" form and before the final horizontal or the final ending stroke off to the right. Much like Exhibit 26, except for a wider open loop at the top, in the same form as Exhibit 1.

In other words, in this case the letter--that probably in the signature which should become an A, which shows so clearly in the affidavit signature, has become a vertical stroke with very narrow loops at all. This is followed by the diagonally downward stroke that ends the signature in a slightly waivering or pulsating line. It's like the ending strokes on Exhibit 42 of the affidavit, or on Exhibit 1 at the bottom, or in the nature of the exhibits we find in Exhibit 37. Exhibit 10 is the September 22nd signature, yes, Exhibit 10.

So that as far as forms are concerned, we find all of the forms in the questioned signature that are found in the known signatures, not in each one but as you see no two of the signatures are exactly alike or even relatively close to one another.

Further, and what is particularly about Exhibit 14, is that it's written absolutely continuously. It started out with writing a pen very poorly and when the original is examined, as one recognizes you get toward the end of the signature, particularly that final ending stroke, the pen is writing a reasonably strong line and a solid line, much different than it did at the very beginning where it hardly wrote at all but left a track.

The signature, the Exhibit 14 signature, moves very freely. There is nothing about it that suggests undue attention

245A

to detail. In fact a number of the details are lost as they are in other signatures. It's written in the typical way of the various known signatures, taking into consideration the variation between them. And there is only one thing about it that in any way raises a question mark as you first look at it; and that is, what is this heavy stroke at the beginning that goes up starting immediately above the right side of the "M", sort of half paralleling and finally running into--paralleling isn't a good word, but into the initial very light stroke and going beyond it and then coming down and ending off in a movement off to the right.

It appears to me to be a correction stroke to intensify that first stroke. It's the only way I can interpret it. It's certainly not typical of forgery or imitation, because someone making a forged signature and an imitation goes to great pain to join strokes together, and sometimes even retouching them. There is no attempt here to join strokes together. It's put in with freedom and in a careless manner, in an area of the signature where the pen has tracked very poorly. To me it has to be interpreted as a correction stroke. It's disconnected from the rest of the signature. It was added ultimately. It wasn't written at the same time--I mean in the same writing motion. It could have been written at the same instance in time when the signature was

signed.

But beyond that the rest of the signature in my opinion has all of the characteristics of the Mortin L. Annis signatures as they appear on the various known documents that have been shown me. Consequently, I have concluded that the same writer signed Exhibit 14 who signed the various other exhibits shown in my photograph, Exhibit 41.

MR. KOVNER: Have you had a chance to examine the Exhibits, 41A, since I'm about to offer that in evidence now?

MR. KATZ: No. But my associate has. First of all if Your Honor pleases, I would like at this moment to request that the court reporter reproduce for me at my cost the entire last answer as quickly as possible, on a daily or less than daily basis, at whatever premium cost is required, because I will need it for final cross examination of this witness. If possible, I would like to have it this afternoon.

You may examine.

My associate tells me that he has examined these and will call to my attention anything that I should raise ahead of time.

MR. KOVNER: I offer Exhibit 41A in evidence.

Q Mr. Hilton, will you explain or would you use Exhibit 41A as an aid to explaining the reasons for the opinion you expressed with respect to the signature on

Exhibit 21.

A It is my opinion that the signature on Exhibit 21 was written by the same writer who signed the various known signatures that have been shown to me on the witness stand, and I described a few moments ago where the signatures came from that are contained in my Exhibit 41A. The signature on Exhibit 21 is a very short signature. It's an abbreviated form of the signature when compared to the ones we have just been discussing. But there are a large number of letters here in evidence which are signed in the same manner in this shortened form, a form, as I have described in connection with the previous signature, constitutes a partial form that could be interpreted as an "M", a central form that is typical of a--in some respects of a "t". Then in this particular one, a looping off to the right, and an ending stroke to the right that one might interpret as the balance of the name Mortin, because this stroke comes off in visually every one of these signatures for a short distance and then swings back to cross this "t" form, so that it undoubtedly was intended to include more of the name than we saw in the full signature, where from the "t" the signature seemed to move into the final initial or the final signature.

Again we have the same kind of movement throughout these genuine signatures of freedom, rapidity, a degree of

emphasis on down strokes and lighter up strokes, very rapid writing, and a very variable writing.

As we look through the group of signatures that have been photographed on Exhibit 42A, one gets the vivid picture of the varyings that goes into this particular signature.

Now, ---

MR. KATZ: You say Exhibit 41?

THE WITNESS: 41A. The questioned signature is written with great freedom. It starts out with a light, long diagonal upstroke, followed by a heavier down stroke. The emphasis being perfectly natural. It's followed by the arch, and then a long stroke up to the top of the--what I have described as the "t" form, with a down stroke on that, a loop and a movement off to the right with good pressure, and then the lighter stroke into the crossing ending with a tapering stroke that is so typical of rapid writing and really characteristic of it.

This is the way genuine signatures are written.

One after another we find comparable form. We find the connecting stroke from the ending of that partial "M" running up on the left side of the tall letter that follows, the curving down stroke coming to the right of the down stroke, and this is the manner in which the signature

on Exhibit 31, the November 16, 1970 signature was written. In this particular portion the connecting stroke between the first letter and the tall letter that follows.

The loop at the bottom is comparable to that particular signature. It's followed by the slanting stroke off to the right and the crossing stroke.

Time after time this crossing stroke occurs. Coming off of that ending stroke, it takes on different forms as a free moving pen would do and one that moves without great precision, as is shown on these signatures.

At times there is a looped form as we have in the questioned signature on Plaintiff's Exhibit 21. I'm talking about the crossing stroke and the final ending stroke of the signature. There is a loop form that wraps around the initial down stroke there. We have the looped form in a letter of July 10, 1969, down near the bottom. That comes from Exhibit 9, if I have flipped through these exhibits correctly.

All in all there is nothing about this signature which in any way raises any question in my mind. It's a short signature. It's distinctive and yet it's without readily interpretable forms, but that's the way these letters are signed one after another. We have 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 in this exhibit alone and there are one or two others that are in evidence which aren't photographed.

It's a combination of these factors plus a complete and total lack of any evidence whatsoever of someone else trying to imitate this unusual form of signature and to make a signature looking like the signature that occurs on the other letters and placing it on Exhibit 21. There is nothing that suggests imitation and that would be the only way that you could get a signature that resembled these known signatures and fit within the pattern of the known signatures so perfectly.

Consequently, I can only conclude that the writer of the known exhibits signed Exhibit 21.

Q Do the known signatures in Exhibit 41A contribute to your opinion with respect to the questioned signature at the top of Exhibit 41?

A Yes, because the beginning stroke and--in other words, the first portion of this signature on Exhibit 14, which is in question, the first portion of that signature follows the pattern that we have in this short signature. The only difference is when you get the longer signature is that the "t" crossing is crossed immediately from the bottom of the signature. But in the same manner as it is here, even though there is the final stroke off to the right. But otherwise they are very close.

For that portion of the signature it does contribute

a great deal of assistance.

Q The known signatures on 41 contribute to your conclusion with respect to the questioned signature at the top of Exhibit 41A?

A They do.

MR. KOVNER: Your witness.

CROSS EXAMINATION

BY MR. KATZ:

Q Did you make this examination at the request of the attorneys for the plaintiff in this case?

A I did.

Q And are you being paid for your services?

A I should hope so.

Q Can you tell us at what rate?

MR. KOVNER: Your Honor, I object. I'm not sure that's appropriate.

THE COURT: It makes no difference to me what rate he's being paid at. I assume he's being paid.

Q Did there come a time when you rendered any written report with respect to your comparison of any of these signatures?

A I did.

Q And do you have that report with you?

A No, I don't. I furnished the report to the attorneys

252A

and I don't have my copy with me.

MR. KATZ: Would you produce that, please?

MR. KOVNER: Here you are.

(Handing.)

MR. KATZ: Is this your only copy?

MR. KOVNER: That's our copy, yes.

MR. KATZ: I'll put it aside and try to deal with it at lunch, if I may, in order to cross examine on that as well.

Q Now, the study of questioned documents and the determination of whether a document is a true signature of the party it purports to be or a forgery is a question of opinion, is it not?

A Yes.

Q It is not a science that can be determined in scientific fashion.

A Well, you get into a debatable field there as to just exactly where the border line is between science and non-science. There are very definite rules of procedure in this, and in that respect it might be considered sort of an applied science. But there is a great deal of individual judgment that must go into these questions.

Q And the determination of whether a document is genuine, two experts, two people with the same or similar

experience that you have might differ directly as to whether the signature was or was not genuine. Is that not so?

A This occurs somewhat rarely but it does occur.

Q It has occurred in instances in which you have been one of the participants, is that not so?

A That's correct.

Q Now, referring to the comparison of a photostatic copy of a document, is there any advantage which the examiner of a questioned document derives in making his conclusion, from being able to see the original on the original paper as compared with seeing only a photocopy?

A There are some advantages, yes.

Q And would you tell us what those are?

A Well, particularly if the signature in the photocopy is the signature that is in question, where one must know all about the details, then it becomes more important to have the original because of the need of making microscopic study under magnification, which is somewhat limited when you're examining from a photocopy.

If the photocopy, however, is one of a group of known signatures and it is a clear copy, the restrictions again are the restrictions that you can't examine under as high a magnification that you might, but it's not always necessary to have to examine each and every signature if you

have a reasonable sample of known signatures that are originals. In these you can determine just exactly what happens within the signature. And from the photocopies you can generally make pretty good judgments.

Now, there may be some question marks left. In some cases there are with photocopies. In other cases there aren't. In this particular case I didn't find that one single photocopy threw a tremendous restriction on my findings.

Q I'm sorry.

A I didn't find one single photocopy I had to examine from in this case was a serious restriction.

Q Now, a photocopy would not enable you to examine the texture of the paper under which the original signature had been affixed, would it?

A No.

Q And the texture of the paper where the ink appears becomes a factor in handwriting comparison under some circumstances.

A It does under some circumstances. I don't think that it's a factor in this case, although in Exhibit 14 some consideration was given to it, of course, because the pen wasn't writing very well at the beginning and part of the question I had to answer was, could this be attributed to the paper surface? I don't believe it's that cause.

Q Did you find any other documents in your comparison with Exhibit 14 where you had the original rather than a photocopy and the pen failed to write in the same manner you have just described in those instances?

A No.

Q There are some of them in which the initial stroke is relatively weak, but in these instances it seemed more as though--

A Well, there is some of them in which the writing is weak all the way through, but it's a rather light colored ink and I didn't find any of them in which we seemed to have a bulky ballpoint pen, as we certainly have in Exhibit 14.

Q Well, would it have been helpful to you in your determination or contributed to the conclusiveness of your determination if you had had two documents on the original paper where that same condition had occurred, namely the bulkiness of the pen in the beginning?

A Well, this is the kind of thing that the same condition is not too apt to occur too many times. It's awfully hard to find two of the same kind. Of course if you did have an authentic signature in which it happened, why, for demonstration purposes it's very nice. I don't think it's essential here because under laboratory conditions where you can examine with a degree of light coming from one side, you can

follow the track of the pen very clearly and see that there is no interruption, even when you're examining with magnification.

Q Now, you say that the examination of these documents or that your enlargment of these documents was 1 and 3/4 times. Was that the maximum extent to which you enlarged these documents in your study?

A No. I made examinations with the binocular microscope which enabled me to go up as high as 20 diameters. Most of my work was done, however, with hand magnifiers and particularly one that I now have in my hand which gives 5 power or 5 times enlargement.

For me this is an easy working enlargement for all but real trouble spots in a signature.

Q You're aware of the practice, are you not, of some questioners of examined documents or making very large enlargements, more than 1 and 3/4 times, in order to analyze the texture, the pressure, and other factors which can be disclosed only by extreme enlargment; are you aware of that practice?

A I doubt if this is done--I'm not aware of people doing this primarily to study those factors, but merely to demonstrate them. But all of this type of thing can be done, using a binocular microscope, and the reason for the

binocular microscope is because it gives you depth vision as well as horizontal vision. And with that you can see far more than you can see in very enlarged photographs.

Q And in fact binocular microscope viewing can be photographed in steroscopic or binocular form, can it not?

A Yes. It's seldom done in the questioned document field but it's perfectly possible to do it.

Q You did not do it here?

A Certainly not.

Q It's correct to say, is it not, that with respect to the admitted documents that you studied, and I'm speaking now of both the photocopies and the documents that were in the original, they were not all the same?

A That's correct.

Q That's correct to say?

A Yes. You mean now the signatures were not all the same?

Q Yes.

A That's correct, yes.

Q And is it not your experience that the execution of a formal document might be different in appearance than the execution of a document which is less formal, such as a personal letter?

A The signatures to them sometimes, with some writers,

this is certainly true.

Q Now, I think you used the language when you were describing the documents in Exhibits 40, and correct me if I'm wrong, 41 and 41A, that there were definite variations among all of those documents?

A Definite variations among the signatures, yes. That's a very important characteristic of this writer.

Q You say it's an important characteristic but there were definite variations among the signatures?

A Yes.

Q Some of the signatures represent fuller signatures than found on other known exhibits, some including the full name for example?

A That's correct.

Q I think you also said that in some instances if you didn't know the name you couldn't tell whether the signature purported to represent the full name or not. Is that correct?

A Certainly as you have just come up to this signature and look at it for the first time, even looking at it carefully, I doubt if many people would be able to say what the signature represented. It's a highly stylized signature.

Q And taking, for example, Exhibit--let me withdraw that.

You used the language that there was a high degree of variation within the signature--within the signatures that were presented to you.

A That's correct.

Q And in evaluating one of the signatures--I don't have a note here as to which particular ones it was--you used the language, "it must incorporate the bulk of Annis' name." From what did you derive that conclusion that it must incorporate the bulk of his name?

A Principally it was because--it had the fullest number of strokes in it. I mean, as you look at these long signatures you have a problem of some of them having more strokes than others.

Q And looking at Exhibit 10 you said that was different, that some signatures included what appeared to be a middle initial "L". Is that true?

A That's right. Exhibit 10 is one of those. It contains the middle strokes which can be deciphered as the middle initial "L".

THE COURT: What is the date of Exhibit 10?

THE WITNESS: September 22, 1969.

And that's true also of the signature immediately above it, the July 30, 1970 signature.

Q And some of the signatures failed to include that

middle initial. Is that right?

A That's right. The affidavit signature, for example.

Q Then there was what you called an "i" dot. Where was this "i" dot in some of the exhibits?

A Well, the affidavit signature, it appears down near the righthand end of the signature and up above the signature there is a dot there. The other signature is again going back to the September 22, 1969 signature, Exhibit 10, where it occurs out to the right and above the signature. These are two definite ink dots on the paper and since there should be an "i" dot in the last name, I so interpreted it.

Q Is it fair and accurate to say, as you did, that in all of the samples that you had before you there were varying designs of the original stroke?

A The original stroke, do I interpret you correctly that this the beginning stroke on the signature?

Q Well, you used the original stroke language and you might tell us what you meant by it.

A I thought I used the term initial stroke. If I did say original stroke, I meant it to be the initial, beginning up stroke. And there are certainly varying designs of this throughout all of the signatures that we have in this case, not only the ones that are reproduced in Exhibit 41, but also in the other Exhibit 41A.

Q Now, some of these samples that you had before you had a pointed character in them; that is, one of the loops was pointed. Is that correct?

A Yes, there are pointed strokes in here, in places where in other signatures there are loops.

Q And in those places, namely where they were sometimes pointed strokes and sometimes loops, there were also in other examples included in these exhibits what you called a retracing. What did you mean by that?

A Well, let us look at Exhibit 41 just a minute. I think it's easier to explain with signatures in front of us. If we look at the affidavit signature, at the second tall stroke, which I have described as a "t", coming up to the top it's pointed and it comes--the righthand stroke comes down from that and there is a very short space there in which the two strokes run together, which forms a retracing in that particular instance. If we go to the bottom of this exhibit and looking at the same letter in Exhibit 1, the signature to the notes of October 16, 1968, the stroke comes up in such a manner that it swings to the right of the down stroke and forms a loop or an open enclosure there coming down. That's what I mean by the loop form. The other being a pointed form.

MR. KATZ: Please read back the last question

and answer.

(Whereupon, the record was read back by the reporter.)

Q Now, in Exhibit 14, which of those forms appear?

A We have the form--the pointed form with a very, very short retracing just exactly like we have in the affidavit signature as far as that particular feature is concerned.

Q And in Exhibit 21 which of those forms do you have?

A In Exhibit 21 we have a pointed form with no retracing at all, and that does occur, for example, farther down among the known signatures, to a letter of November 16, 1970, which is Exhibit 31, where you have the pointed form and no retracing. In other words, the stroke coming up comes up and turns very sharply at the top and comes down on the righthand side.

MR. KATZ: I move to strike everything but the first part of the answer. I move to strike everything after "and".

THE COURT: Read that back, please.

(Whereupon, the answer was read back by the reporter.)

THE COURT: The motion is denied. I think that's an application. We will adjourn for lunch until 2:00 o'clock.

(Luncheon recess taken.)

AFTERNOON SESSION

2:00 p.m.

(In open court.)

THE COURT: Mr. Katz, proceed.

ORDWAY HILTON, resumed the stand and testified further as follows:

CROSS EXAMINATION (Cont'd)

BY MR. KATZ:

Q Now, Mr. Hilton, will you look at the Exhibit 14, the guarantee of September 30, 1969. Now, actually on that signature you found that there was something different than appeared in any of the so called genuine signatures, did you not?

A Yes.

Q What was that something different?

A That's that added intensification stroke at the lefthand side of the initial letter, top.

Q That is, there appeared to be a second beginning stroke in addition to the single strokes that you had found in the other admitted signatures. Is that correct?

A Yes.

Q Now, did you find the difference in color between the two strokes?

A Yes, because one is very much heavier than the

Q Now, you have no way of determining with any precision whether that additional stroke was added by the original writer or by some other person, do you?

A No. I can only make a judgment on that.

Q And that second or additional stroke gives the signature a sort of patched appearance. Is that correct?

A Yes.

Q Now, one of the factors that you used in coming to the conclusion that the signature on Exhibit 14, despite this difference that you have just described, was in fact the signature who had signed the admitted signatures was that there was no evidence that clearly points away from genuineness. Isn't that one of the factors you used?

A Yes.

Q And had there been any evidence that pointed away from genuineness would that have effected your judgment as to whether this was or was not the signature of Mortin Annis?

A Yes, it certainly would have effected the ultimate opinion that was reached.

Q Now, you were given more sample signatures to evaluate than those that appear in Exhibit 41 and Exhibit 41A. Is that not the case?

A Only one or two.

Q And did those one--the one or two that there was

given to you include the signature on Exhibit 20?

A Exhibit 20?

Q I want to check the exhibit number.

MR. KOVNER: It's Exhibit 6.

A I don't have Exhibit 20 up here, so I don't know what it is.

Q I show you a copy of Exhibit 20 and ask you whether it purports to be--let's look at the original then. It's a letter of January 14, 1970. Was that given to you for examination?

A Yes.

Q And did you make a similar photo study of that document?

A I made a similar basic study of it, yes.

Q Do you have your photograph of that here in the courtroom?

A No, I didn't photograph this one.

Q You didn't photograph that one?

A No. I made my basic study but I didn't photograph this signature.

Q Was there some reason that caused you not to photograph that one?

A Yes, there was.

Q Will you tell us what that reason was?

A Well, when it was given to me, it was given to me with the understanding that it could well have been written by some other person, and I examined it to make sure that I concurred with that, and then abandoned the thing.

Q Did you concur with the judgment that that exhibit number 20 was in fact made by some other person than Mr. Annis?

A Well, I certainly--it certainly is different than any of the known signatures here, and that was the conclusion I reached. So judging by these signatures I would have to say yes, I did concur in that.

Q Well, you made a careful examination of the signature "M. Annis" on that letter, did you not?

A Yes. Not as detailed as I did on these others but I did make a good preliminary examination of it before I abandoned the thing entirely.

Q I know in your letter report at page 3 you refer to "a careful examination of the signature M. Annis on the letter of January 14, 1970, and a comparison of that signature with the various known signatures of Mortin Annis."

Did you make that careful examination?

A Yes.

THE COURT: Is that the signature that is admitted in the record when the deposition was read that Mr. Kassin

said that he and Mr. Feldman had the authority to sign?

MR. KOVNER: That's the same one, Your Honor.

MR. KATZ: Yes, that's correct.

THE COURT: I don't understand where we're going. This is a waste of my time. If it's conceded that is not his signature, why do we have to go over this anymore?

MR. KATZ: Because I'm now looking to references to the statement that appeared in Mr. Hilton's report that there was no evidence pointing away from genuineness of the signatures, and I'm pointing out--

THE COURT: The testimony as far as I know is that there is no evidence pointing away from the genuineness of the signatures that he compared with the signature in question.

MR. KATZ: I think there are other reasons as well, Your Honor please. Mr. Kassin is, I believe it will be developed, a forger, and I think that it's important to know what Mr. Hilton was told with respect to this document prior to the time that it was excluded from the list of exhibits here. Although in the report, in the opinions and reasons he uses the same language--

THE COURT: It's a waste of time. I don't see this as being anything pertinent to your defense at all. It's a complete waste of time. To ask this man about something

that is admitted is a waste of time.

MR. KATZ: Your Honor, I take it that the Court is directing me not to inquire further about this?

THE COURT: That's precisely correct.

MR. KATZ: In that case I will follow that direction and take exception.

Q The fact that you had that document before you--withdraw that.

At the time that you excluded Exhibit 20 from your photographic list, were you told any or were you given any instructions or told anything about that particular signature by counsel?

A I only--I have told you what in substance I understood the statement to be, and I don't quote the statement exactly, in that counsel was under the impression or of the opinion, I don't know exactly which he said, that this signature was probably not written by Mr. Annis. He left it with me. I looked at it sufficiently to satisfy myself that there wasn't anything that would indicate anything else and that was all.

Q And did you therefore not regard that signature as being any evidence that would clearly point away from genuineness?

A It certainly has nothing to do with either of the

other signatures. I found nothing in it that would indicate a connection in any way. In other words, having examined it and having examined the other signatures, these were three independent problems.

Q All right. Now, let's get back to your analysis of the various documents which you did photograph. Looking at the form where the original affidavit has its next pointed character, you mentioned that the affidavit either had a loop--at that point, the second character, had a loop or retracing. Is that correct?

A We're talking about the affidavit signature?

Q As compared with the others, that they either had a loop or retracing.

A The affidavit signature has a retracing . There is no alternative there. At the top of the letter, that's what you're talking about?

Q Yes.

A It's a slight one.

Q And the others?

A And the other known signatures, there is one of them, Exhibit 1, the very last one in my photographic Exhibit 41, that has a looped form at that character where there is definitely an open loop.

Q And in your direct testimony I believe with mspect

to that second character you said, "it seemed to fit the description with variables." Do you recall giving that testimony?

A No, I don't recall that. If I said that I didn't mean to say it or at least it doesn't make sense to me now.

Q And does it make any sense if I say to you that it appeared--the second character as it appeared on Exhibit 14 was stated by you to be related to the movement we find in the other signatures?

A Yes, that's correct, it's the same basic movement.

Q And referring to the admitted signatures, you used the language, and you correct me if I'm wrong or if that's not your recollection of your testimony, "It fits around the pattern of Exhibit 14."

Do you recall giving that testimony?

A The known signatures do fit around or that Exhibit 14 fits within the pattern established by these known signatures.

Q Now, did that pattern consist of a single method of reproducing a character or of multiple variations which you feel fell into a pattern?

A The pattern I'm talking about has to be derived from these variable signatures that we have here as to what is being created is something that must be sort of the mean

course that the pen takes as described by these different signatures, the average course.

Q And you said, did you not, and it's your testimony now that Exhibit 14 does not take on the shape of the other signatures?

A If I didn't say it I should have said it, the identical shape.

Q With that ammendment you're saying it does not take on the identical shape of the other signatures?

A Yes, of any of the other signatures.

Q And that this second movement in the signature, in Exhibit 14, had become a vertical stroke with very narrow loops, if at all?

A No, that would not describe the second character but it would describe the final vertical character as it occurs in Exhibit 14.

Q With respect to that final character, is it accurate to say that it doesn't take on the shape of the other signatures?

A Not in its absolute details. That would be true also of anyone of these letters, that you can't find the exact duplicate among these few signatures that we have here.

Q But that Exhibit 14 with respect to that movement that you now describe had become a vertical stroke with very

narrow loops, if at all?

A That is correct. That kind of movement, the same kind of movement occurs in other signatures where the loops are a little bit wider.

Q Now, is it not the case that no two of the known signatures which you examined are exactly alike?

A Yes.

Q And is it not the case that no two of the known signatures that you examined are even very similar to each other?

A Well, there are several of them that are reasonably similar to one another, so just what you mean by very similar they are not identical, no. However, they encompass very similar patterns within them.

MR. KATZ: If Your Honor please,we have ordered the transcript of the direct. It has not yet appeared. I will continue now but I may have to suspend until that comes in.

THE COURT: We are not going to suspend. If you want to have Mr. Hilton for further cross examination we will continue with it and I will give you the right to have him but I'm not going to suspend.

MR. KATZ: I didn't mean to suspend the trial. But I can continue for a while.

THE COURT: All right.

Q Now, there was one thing about your comparison of these signatures that raised a question mark in your mind as to the similarity of Exhibit 14 with the others, was there not? And I'm referring to what you described as the direction stroke.

A The correction stroke.

Q The direction stroke.

THE COURT: Correction.

MR. KATZ: I think he used the term direction.

THE COURT: Correction is the word.

Q Is that the same thing we're talking about, this additional dark stroke, or are we talking about a direction stroke?

A I said nothing about a direction stroke but I did talk about a correction stroke, that heavy stroke near the beginning of the signature that we talked about a few moments ago.

Q Now, you were evaluating at that moment whether that might be a forgery or not, were you not, when you saw that second stroke?

A Yes.

Q And on your direct testimony you gave a variety of reasons of why you interpreted that as a direction stroke.

Was that a matter of opinion on your part as the interpretation?

MR. KOVNER: Objection, Your Honor. I ask counsel to refer to it as correction stroke since that's the way the witness refers to it.

MR. KATZ: Excuse me, I will do so.

A A matter of opinion based upon long years of experience with this type of situation.

Q And one of the factors that you used in arriving at that conclusion was what you characterized, and I believe quoted correctly, "the lack of someone else trying to imitate the stroke."

Where did you obtain the information that there was a--withdraw the question.

To use the language I believe you used on direct was, "plus the lack of someone else trying to imitate." And you said there was nothing to suggest imitation.

A In that I was referring to the entire signature and not the correction stroke. I would answer your question with reference to the entire signature and not the correction stroke.

Where I derived the information was from my own study of this signature, that it has none of the qualities of an imitated signature. Rather, it has only the natural

freedom of writing that is perfectly consistent with the known signatures that are available in this case.

MR. KATZ: I offer in evidence a report of examination of three denied signatures dated October 5, 1973, which Mr. Hilton has just identified.

THE COURT: All right, it will be marked.

(Defendant's Exhibit K, marked for identification.)

MR. KATZ: You may examine.

MR. KOVNER: No further questions, Your Honor.

MR. KATZ: I would like to keep the witness here until the transcript of his direct comes down.

THE COURT: Now, you have indicated on direct and on cross examination, and I don't know the exact words, but that you were one--one of the reasons that led to your conclusion was that there was no evidence of imitation.

THE WITNESS: Yes.

THE COURT: I think you indicated that in reference to Exhibit 14 and Exhibit 21.

THE WITNESS: I did, sir.

THE COURT: Now, when you made that statement were you referring to the characteristics of the signature or the letters or are you referring to any other kind of evidence? In other words, what I'm trying to say is you reached that conclusion based upon an examination of the signature itself?

THE WITNESS: Yes, I did, sir.

THE COURT: Without any extrinsic evidence? You looked at the signature and you're saying, as far as you can see the signature, this is different than any person who would attempt to forge. Is that what you mean?

THE WITNESS: That's exactly what I mean. I know virtually nothing about the case.

THE COURT: Thank you very much.

THE WITNESS: May I be excused from the courtroom for a few moments to inquire about a telephone call? Then I'll come back up.

THE COURT: Yes, of course.

THE WITNESS: I'm very anxious to finish this today. I have other commitments.

THE COURT: All right, Mr. Kovner, call your next witness.

MR. KOVNER: Your Honor, I just have two items more of evidence which I have discussed with my adversary and I just want to confirm now whether or not it would be an acceptable--it would acceptable to him to simply introduce the entire Kassin deposition in evidence, and then for us, each of us, taking the objections that are set forth in that record and therefore obviate the necessity of reading particular portions and in our post-trial memoranda we can

highlight particular portions.

THE COURT: You're not going to read particular portions here.

MR. KATZ: I don't think counsel suggests that.

MR. KOVNER: I suggest that I offer in evidence the entire deposition.

MR. KATZ: As I understand the suggestion, and you correct me if I'm wrong, that we offer in evidence the entire deposition and that in our final trial brief we take whatever objections there may be, that we would take if the witness were on the stand and giving the testimony, and let the Court make a determination at that time.

MR. KOVNER: That's acceptable with us, Your Honor.

THE COURT: All right.

MR. KOVNER: This would then be Exhibit 43, the original deposition, executed deposition of Ronald Kassin.

Our final bit of evidence, and it can be dealt with by stipulation, relates to the legal expenses in the United States, and I have copies of the ledger sheets from the Gottlieb firm and our firm reflecting all amounts billed to date, and if by stipulation I can annex copies of those, and I will state the amounts now, and counsel may look at them if he wishes, copies of those amounts--these ledger sheets would be annexed to our trial memorandum.

MR. KATZ: If you or any other attorney in your firm simply certify those are the expenses I will accept those statements.

THE COURT: Why don't you certify that and put it in the record.

MR. KOVNER: The expenses that have been billed to date, from the Gottlieb ledger, $5,874.33.

From the Lankenau, Kovner, trial counsel, $2,646.99. I so certify.

That's the plaintiff's case, Your Honor.

THE COURT: All right.

Mr. Katz, proceed.

MR. KATZ: Your Honor, at this point I move to strike first of all with respect to--may I have the pleadings?

(Pause.)

MR. KOVNER: Your Honor, may I request the opportunity for Mr. Hilton to wait in Room 1305 until that transcript emerges and then we can send down for him.

THE COURT: Yes.

MR. KOVNER: Thank you, Your Honor.

MR. KATZ: At this point I move to strike with respect to any claim under the guarantee or damages related there, allegedly dated January 14, 1970, upon the ground that it has not been established, but rather the contrary

has been established, that Mr. Annis ever signed that document, nor has it been established, as has been suggested, that there was any competent, legally competent authorization--

THE COURT: That's the second guarantee?

MR. KATZ: The second count, $50,000 and all damages relating thereto.

THE COURT: Motion is denied.

MR. KATZ: I now make the same motion with respect to the entire claim of $150,000 upon the ground that it has not been competently established by any--it has not been competently established in a manner that satisfies the requirements of the applicable law that that guarantee was in fact executed by Mr. Annis or authorized by him.

THE COURT: All right, that motion is denied as well.

MR. KATZ: I call Mortin Annis to the stand, please.

MR. KOVNER: With the permission of the Court, I'll put these back in order to make it easier.

M O R T I N  L A W R E N C E  A N N I S,  SR., called as a witness herein, having been first duly sworn by the Clerk of the Court, testified as follows:

MR. KATZ: If Your Honor please, I'd like to add to my motion at the end of the plaintiff's case that there is

no competent proof with respect to the quantum of damages in that the documents that were introduced were not the best evidence; that there was no record--no original record produced to show all of the transactions; that there was a secret record referred to which was never introduced in evidence, nor the amount thereof established; that therefore the amount of the claim and damages has not been established.

THE COURT: Well, that motion is denied. My recollection of the evidence is that it was all to the contrary. I thought that every document had been identified by Mr. Meier, including a document neither he nor you introduced in evidence which had not been among the original exhibits which he indicated from which he made his calculations as to the invoices with the 10% overcharge, or whatever.

MR. KATZ: It was his calculations and not an original book of entry.

THE COURT: The motion is denied.

Proceed with the examination of the witness.

MR. KATZ: May we have the originals of the Exhibits 14 and 20?

MR. KOVNER: The entire exhibits are in order at the left of Mr. Annis.

DIRECT EXAMINATION

BY MR. KATZ:

Q Mr. Annis, will you look at Exhibit number 20.

A Am I supposed to look at it up here?

Q Which purports to be a letter dated January 14, 1970.

A Yes, I have it.

Q Is the signature over the typed words "Mortin Annis" your signature?

A No, sir.

Q Did you ever authorize anyone, either verbally or in writing, to affix your signature to that document?

A No, sir.

Q I now ask you to look at Exhibit 14.

A I have it.

Q Will you look at the handwriting that appears just above the typed words 'Mortin L. Annis, Sr."

MR. KOVNER: At this point I would like to make an objection, if I may. On the decision on the motion for partial summary judgment Judge Kronig in holding that there still remained an issue of fact with respect to the signature of this document, held, and his order says that it is a pre-trial order in so far as it goes, that Mr. Annis has disqualified himself as a witness on the question of execution of that guarantee by reason of his failure, his sworn failure of memory with respect to it. And I would draw the

Court's attention too, to a section of that decision upon which, if I can lay my hands on it.

MR. KATZ: It starts on the prior page.

MR. KOVNER: It's on page 6.

MR. KATZ: It starts on page 5.

MR. KOVNER: And it goes over and I think the operative language is in the last paragraph of page 6.

THE COURT: All right. What is your objection?

MR. KOVNER: My objection is that by a pre-trial order, which I believe is the law of this case, my adversary chose not to appeal from this decision, that the defendant has removed himself as a witness on the question of who signed that document. I believe he is about to question with respect to that.

THE COURT: Was that in reference to pre-trial depositions?

MR. KOVNER: Yes, he was relying on the pre-trial deposition.

THE COURT: It seems to me that can prevent--that went to the issue of summary judgment. The issue here, if I'm correct in my interpretation of what Judge Kronig was saying, if this witness testifies in regard to that, then you have every right on cross examination to show how lacking in memory he was in regard to other matters and therefore

to impeach his credibility. That's the way that's to be handled, not by barring him from being allowed to testify in this trial.

MR. KOVNER: Thank you.

MR. KATZ: May we have the question read, Your Honor?

THE COURT: Yes.

(Whereupon, the last question was read back by the reporter.)

Q And I ask you whether you affixed that handwriting of your signature to the document marked Exhibit 14?

A I do not recollect any such signing.

MR. KATZ: You may examine.

THE WITNESS: I'm sorry, were you talking to me?

MR. KATZ: No, I was talking to counsel.

MR. KOVNER: No questions, Your Honor.

THE COURT: What?

MR. KOVNER: No questions, Your Honor.

THE COURT: You may be excused.

(Witness excused.)

THE COURT: Call your next witness.

MR. KATZ: Now, there was one other witness, Your Honor please, a Mr. Keiser, who was not subpeonaed to appear, and that as late as two o'clock this morning his

subpoena had not been revoked or had not been relieved by the other side and I expected him to appear. I do not see Mr. Keiser in this room, and I have a problem of therefore not being able to produce him, not having subpoenaed him myself in reliance upon the fact that he was subpoenaed by the other side.

I have that problem and will have to make some telephone calls to find out why he is not here.

THE COURT: That's your problem and I'm not going to hold up the trial because of that.

MR. KATZ: That's the last witness that this defendant has.

THE COURT: You're under some responsibility to get your own witnesses and subpoena them. You have enough experience as a lawyer to realize that things like this happen.

Where are we?

MR. KATZ: Pardon me, sir? I didn't hear the last part.

THE COURT: I said, where are we? Is that your case?

MR. KATZ: That's my case exclusive of Mr. Keiser, who I propose to call by trying to reach him by telephone now.

THE COURT: Well, have your associate go out and call him. I don't understand why this wasn't done before.

I might tell you, Mr. Kovner, that I cannot take notice of matters that are not before me. I indicated to you if you wanted to get the matter before me, the proper way to do it.

MR. KOVNER: Your Honor, at this interval may I ask if you may be referring to Defendant's Exhibit A?

THE COURT: I'm not referring to Defendant's Exhibit A. You referred me to an opinion of Judge Kronig. I'm not referring to the opinion--all right.

MR. KOVNER: I would like to offer in evidence, Your Honor, the depositions that were--

MR. LANKENAU: May we have a moment to discuss this?

THE COURT: I don't know what there is to discuss, but go ahead. We can't do anything anyhow.

(Plaintiff's Exhibit 43, marked in evidence.)

MR. KATZ: I may be able to shorten the trial. Can I get a stipulation from counsel that counsel has instructed Mr. Keiser since yesterday that he is relieved of the obligation to appear here pursuant to the subpoena?

MR. KOVNER: No, I wouldn't grant that. I have not called him and directed him to come down.

MR. KATZ: You had him under subpoena.

MR. KOVNER: That's true.

MR. KATZ: The arrangement is he would come when called. Is that correct?

MR. KOVNER: That's correct.

MR. KATZ: And you have not called?

MR. KOVNER: That's correct.

MR. KATZ: I will accept that stipulation. I will therefore dispense with the presence of Mr. Keiser under those circumstances, and the defendant rests.

THE COURT: Are you sure? Didn't you indicate that you wanted to examine the transcript of Mr. Hilton's testimony to finish your cross examination?

MR. KATZ: Yes, I do want to do that. That I would like to do.

THE COURT: How soon will that be finished?

MR. KOVNER: May I address the Court and on the record, I'm totally in the dark as to what is not before the Court which may have been reflected in Judge Kronig's decisions.

THE COURT: He indicated that Mr. Annis was not a competent witness, I don't know the exact language.

MR. KATZ: I'm having trouble hearing the Court.

THE COURT: I said that Judge Kronig had indicated

in the portion of the opinion that you had referred me to, on pages 5 and 6, of his opinion on the motion for partial summary judgment that Mr. Annis was not a competent witness because he had a failure of memory and various other material facts. I indicated to you at the time when you raised it that this did not disqualify Mr. Annis from testifying in the trial; that I had assumed that Judge Kronig had reached that conclusion from a reading of pre-trial oral testimony taken, I would gather, from depositions of Mr. Annis.

The way for you to get the matter, if there is any such matter, was to impeach his credibility, if that was your desire, and it apparently was not. It was to examine him on the deposition.

MR. KOVNER: The sentence I was referring to that I believe Judge Kronig was relying on was restated virtually verbatim with respect to the September 30th guarantee by the witness here and therefore we have nothing further to add with respect to it.

THE COURT: I don't understand what he means, a failure of memory.

MR. KOVNER: I believe he said, Your Honor, he could not recall whether or not he signed it. I don't have the precise words, but I think words to that end were reiterated. In advance of that I was concerned, lest there be different

testimony, that was the thrust of it.

(Discussion off the record.)

MR. KATZ: In that case we will dispense with it and the defendant rests. The defendant moves all the motions made at the end of the plaintiff's case and moves on all the evidence for a dismissal, first with respect to the $50,000 clause on the ground there is no evidence to support it; secondly with regard to the entire case on the ground that there is no competent evidence to support it. Finally, with regard to the entire case on the ground that there is no competent proof of damages. And on all of the other grounds specified accompanied.

THE COURT: I will defer decision on that motion pending determination of the case.

How much time do you gentlemen--I assume you gentlemen are going to file post-trial briefs?

MR. KOVNER: Yes, Your Honor.

THE COURT: I want those post-trial briefs geared to the evidence that's been introduced in this case. So I suppose we will have to determine when the transcript is going to be available.

MR. KOVNER: As far as we are concerned, we would not need a transcript in order to prepare the post-trial brief.

MR. KATZ: We will require them.

THE COURT: I said that I wanted it geared to the testimony. That means that I'm expecting both sides to point up to me in their post-trial brief any evidentiary proof both in the exhibits and in the transcript.

It's now the 10th. Give the reporter three weeks for the transcript until the 31st of October. How much time thereafter would you want to file your briefs? I also, of course, want you to file with those post-trial briefs proposed findings of fact and conclusions of law.

MR. KATZ: I would say thirty days.

THE COURT: That's the end of November?

MR. KATZ: That's correct.

THE COURT: How does that suit you, Mr. Kovner?

MR. KOVNER: That's fine, Your Honor.

THE COURT: All right, all briefs in chief and proposed findings will be filed by both parties by noon on November 30th. They will be filed simultaneously.

MR. KATZ: November 30th?

THE COURT: November 30th. They will be filed simultaneously and I will give both sides, if they find there is a need to file reply briefs, I will give both sides until the close of the business today on Friday, December 7th, to reply to anything that's in the other's

290A

briefs.

MR. LANKENAU: Your Honor, I believe that's the day after Thanksgiving, a day when at least our office is normally closed except for--

THE COURT: Thanksgiving is on the 22nd.

MR. LANKENAU: I'm sorry, I'm in error then, Your Honor.

THE COURT: The briefs in chief on the 30th by noon, and reply briefs, if any, by 5:00 p.m. on the 7th.

Is there anything further, gentlemen?

MR. KATZ: Nothing further. The defendant moves for judgment in favor of the defendant upon the grounds specified previously.

THE COURT: I understand that. As I said, I will reserve judgment on that until all the briefs are in.

I think you gentlemen may take your exhibits, but in order for me to be able to study the case, when you're finished with them, when you file your briefs, submit the exhibits with them to me so that I can use them.

MR. KATZ: We'll get a complete set of original exhibits.

MR. KOVNER: I think we have all the exhibits.

MR. KATZ: So the originals we can get to the Court right away.

MR. KOVNER: We can leave the originals here, if you wish.

MR. KATZ: This is one of the occasions that counsel on the other side has been cooperative and courteous and it has been a pleasure to work with him.

THE COURT: All the plaintiff's and defendant's exhibits can be left with the Clerk?

MR. KOVNER: Yes, Your Honor.

MR. KATZ: There are some others, there are some telegrams. Suppose we say they will be left with the Court by--

THE COURT: Listen, gentlemen, take the exhibits in the event that you're in error and check them. I am not going to get to this obviously until I get your briefs. The one exhibit I do want is, of course, Exhibit 42, which is part of the file. That's the original affidavit.

MR. KOVNER: Let me leave that.

THE COURT: All right, gentlemen. Court is adjourned.

(Whereupon, the case was adjourned.)

* * *

292A

Plaintiff's Exhibit 1

NOTES

Between

Mr. Morton L. Annis, p.o.b. 1, Tampa/Florida 33601 (USA)
(hereafter M.A.)

and

Messrs. Weitnauer Trading Company Ltd., 36/38 Petersgasse, Basle (Switzerland)
(hereafter WTC)

it is decided as follows:

1. Goal:

Creation of proper trade marks of spirits. Sale of such spirits and other trade marks of spirits to importers in the United States and other countries.

2. Trade Marks:

M.A. investigates the possibilities with regard to the trade marks to be registered and the respective labels.

3. Registration of the trade marks:

The registration of the trade marks which are free for registration takes place through the lawyer of M.A. on behalf of WTC (or eventually other suitable firms). The trade marks thus registered are property 5o:5o of both parties concerned. The legal rights of M.A, with regard to his 5o% share will be stipulated in a separate contract.

4. Purchase:

WTC is in charge of the purchase of spirits in various European countries.

5. Sale:

M.A. is in charge of the sales' organisation of spirits in the United States, the conditions being as follows:

PLAINTIFF

- .sive sales rights are granted to appropriate :ters for a long period of about 15 years, d on a specific annual minimum turnover.
- very against letter of credit or satisfactory :ing arrangement.

6. Accounts:

WTC sets up quarterly accounts as follows:

amount of sales
./. sales commission
= net sales result

./. purchase price of the sold products
= gross profit

./. effective expenses of M.A. and WTC, viz.:

- taxes for trade marks
- lawyer's fees
- costs for designs
- material: labels
  corks
  bottles

./. effective expenses with regard to:

- trips for purchasing purposes
- interest on invested capital
- eventual losses
- various expenses

The remaining balance (net profit or net loss) will be shared 5o:5o by M.A. and WTC.

7. Business policy:

The choice of the trade marks, the buying and selling policy, will be set up jointly by M.A. and WTC.

Tampa/Florida
Basle/Switzerland, October 16th, 1968

WEITNAUER TRADING COMPANY LTD.

.....

Morton L. Annis

.....

(S. Meniconi) (F. Meier)

Morton L. Annis, Inc.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

October 25, 1968

294A

PLAINTIFF'S EXHIBIT 2

Mr. F. Meier
Weitnauer Trading Co.
4001 Basel
Switzerland

Dear Mr. Meier:

Please note my letter to Mr. Cotterell of The Curtis Distillery Company, and I hope you will be able to get samples of these products so that I may have your expert opinion on them.

I believe I have already answered all the questions as laid out on the notes of our visit on October 16 and 17.

I think the important position is that we will have to keep sending the additional samples as requested. I know this is expensive and burdensome but I think as we have done so well so far we can continue this procedure.

Cordially yours,

Enc.

2

Morton L. Innis, Sr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

295A

February 5, 1969

PLAINTIFF'S EXHIBIT 3

Mr. F. Meier
Wietnauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Mr. Meier:

I thought I would write a general letter with copies to all your associates, giving you a status report. First of all, the samples of the Sherry were very well received and our boys were very pleased with it, and we shall use this product under the brand name "Don Sebastian Spanish Cream Brandies."

We are still interested in the Dutch Cordials in the delft upright bottle but as this will be for the holidays, I wonder if there would be a gift carton available. We can supply the labels.

We are sending next week the Raffles labels for Gin, Vodka, and Scotch to Allied Breweries and they will produce the labels in England.

We are going to make selections on the champagne and the cognac which we will use under the label "Maison Cassini." We are working on this design.

A new and exciting situation has developed because we have now a new company to distribute our product, called Intercontinental Wine and Spirits Ltd. This is an organization that is now dickering for the distribution rights on one of the largest selling domestic wines in the United States. They [illegible] I think this deal should go through [illegible] ould give us a tremendous deal for good [illegible]s.

PLAINTIFF

3

135

Incidentally, have we followed up on the matter of the Spanish wine from Ramon Cifuente's nephew, Armando? We probably have to change the neck label on this product to conform to U.S. regulations but I would like to know what you think on these prices. As soon as I can possibly do it I will give you a run-down of the brands by prices as I see them and the entire situation.

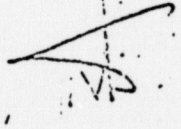
It looks to me like we are going to use Tuxedo Scotch bottled in Glasgow with a new type of label. We also will import bulk Scotch to be used under a special label for the States. This, of course, is in addition to Allied Breweries 8 year old Scotch. What is the supply of 8 year old Scotch and older Scotch? Allied Breweries has promised us 25,000 cases of 8 year old for this year but I wonder if there would be any older Scotch so that we could put out a Deluxe Tuxedo label.

I am still waiting to hear about the General Cigar Company situation and I would suggest that if you cannot conform to Mr. Strauss' suggestions that you should raise the actual price of the cigar to the European customers and get some of your profit in that manner.

I plan on being in Europe sometime in April and will no doubt have one of the principals of the new company join me and who will be a technician and will be able to discuss many of these matters with you.

Best wishes, and with kindest regards.

Sincerely,



cc: S. Meniconi
W.H. Tiefenthaler
A. Weitnauer

Morton L. Kassins, Sr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

297A

April 7, 1969

PLAINTIFF'S EXHIBIT 4

Mr. F. Meier
Weitnauer Trading Co. Ltd.
Basle, Switzerland

Dezr Mr. Meier:

I arrive in Basle on April 24 at 4:45 PM via Swiss Air, Flight 743. I return to Paris on the 25th but want to spend all possible time with you on the discussion of our liquor situation.

Mr. Ronald Kassins, President of International Wine & Spirits, will be with me along with Mr. Ed Radish, his Sales Manager. I believe they want to go to the Champagne Country and also to Holland to look at the Cordial situation.

The important fact is that we are now set up and ready to start business and the situation now looks something like this: The new company (Intercontinental) will be buying merchandise all throughout Europe not only what we have offered to supply them, but also Austria wines, Czechoslovakia beer, and very probably a large amount of items from Italy. It is my suggestion that your company handle all these items. As you know, we are now set on a $3. per case commission in France and $2. from the U.K., Holland, and Spain but on the other items we may have to scale this down, particularly from Italy where the items are rather low in price. The main thing is that we are now ready to "roll" and I don't think there is any doubt that this company will be very successful and move a great deal of merchandise.

Incidentally, we may take over an American importing firm that handles Gancia. It might be interesting if you have any contacts with these people.

Best wishes to all, and looking forward to seeing you in Basle.

Sincerely,

MLK

4

WINE AND SPIRITS LTD.

## PROSPECTUS OF ANNUAL OPERATIONS

It is estimated that the Inter-Continental Wine and Spirits operation can generate approximate gross sales of over $12,000,000. in the first year of operation. Gross profit from this volume would be approximately $1,800,000. With an estimated profit before taxes of approximately $250,000.

These figures represent sales and income from the following subsidiaries of the parent company:

1. Global Spirits Incorporated - This is a wholly-owned subsidiary organized for the purpose of distributing imports of Scotch, Gin, Vodka, Rum, Cordials, and similar distilled spirits. The estimated gross sales of this subsidiary is $1,250,000.

2. Regency Wines & Liquors - This is a New York City wholesaling operation which will generate gross sales of close to $5,000,000. in the first year of operation. This wholesaling subsidiary will have franchises on a number of domestic wines and related products.

3. K.R.K. Bottling Company - This is a company set up for producing, manufacturing, and bottling New York State wines and champagne. The total production volume of this subsidiary is reflected in the statement of the Statewide Beverages Distributing operation which follows. However, there is an interval net profit which will result from the K.R.K. Bottling operation of approximately $40,000. in the first year of the operation.

4. Statewide Beverages Incorporated - This is a wholly-owned subsidiary of Inter-Continental Wines and Spirits for the purposes of billing domestic wines and spirits covering both the production of K.R.K. and the purchases of other types of domestic products. It is estimated that sales of this subsidiary would be approximately $2,400,000. annually.

5. Old World Imports Incorporated - This is another wholly-owned subsidiary of Inter-Continental for the purpose of billing all imported wines, primarily from Italy, Czechoslovakia and Austria. The gross sales of this operation will be approximately $3,450,000.

-continued-

299A

This entire operation will be headed by Mr. Ronald Cassin, formerly Executive Vice President of Schenley Affiliated Brands. Mr. Cassin will supervise the sales activities of 18 salesmen located in strategic marketing areas throughout the country.

It is expected that with proper clearance from Federal and State authorities the basic operation of Inter-Continental will be functioning as a sales organization on and after May 1, 1969. Active sales contracts will be entered into as soon as the Federal Law permits and proper licenses have been received, which we fully expect to be on or after May 1. The gross sales estimated above are dependent upon the conclusion of certain agreements which are in a final negotiating stage at the present writing. Every attempt has been made to approach each income figure on a most conservative basis and it is fully expected that even with normal start-up costs this organization would easily show the typical industry average of 2% net, before taxes, on its first year's production. *Attached herewith are proforma statements consolidating the expected gross sales, gross and net profit figures for one year's operation.

*(I will bring the proforma with me and show it to you in Switzerland.)

Morton L. Janis, Jr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

300A

June 9, 1969

PLAINTIFF'S EXHIBIT 5

Mr. F. Meier
Weitnauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Mr. Meier:

Please pardon our delay in sending you the new pro forma on Inter/Continental. So many things are popping in this situation that it changes from day to day. As you will understand, Ronnie is running the company and I am just sitting in the background trying to get it started from the financial point of view.

No doubt we will have a publication sometime this Fall but, of course, you will be guaranteed the conversion ratio at the "inside price."

I know this is a very nebulous letter but we just have not gathered all our facts and figures together as yet.

Best wishes.

Cordially,

5

301A

Morton L. Simms, Sr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

June 16, 1969

PLAINTIFF'S EXHIBIT 6

Mr. F. Meier
Weithauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Mr. Meier:

Enclosed herewith is the new pro forma statement on Inter/Continental. As you can see, there has been a considerable change in some of the items. On the next to the last page I have a check mark by the items that you, evidently, will supply. In addition to this, I believe that the Regency Sherry from Allied Breweries should be added.

The Italian imports must be paid in the United States as they have an office in Chicago and want to get the American money there.

This adds up to 112,000 cases which, of course, is just an estimate but I think considerably more can develop.

I certainly think that you should try to have a commission of an average of 70¢ to 80¢ a case which would be close to $90,000 commission for the first estimated year. Evidently, the company is going to put out a public issue sometime this Fall but as far as your organization is concerned you will still have the conversion rights on the inside price and I will write you more about this as soon as I can get to New York and sit down and discuss this matter with the underwriters.

Best wishes.

Cordially,

6

302A

PLAINTIFF'S EXHIBIT 7

# WEITNAUER TRADING COMPANY

LIMITED

CABLES: WEITCO BASEL
TELEPHONE: (061) 23 19 19
TELE - PRINTER: Nº 62 194

WTC

Mr. Morton L. Annis
P.O. Box No. 1.

Tampa /FLORIDA

U.S.A.

YOUR REF. OUR REF. PURCH ME/wk 4001 BASEL, (SWITZERLAND) PETERS GASSE 36 July 3, 1969

Dear Mr. Annis,

We refer to your letter of June 16, 1969 with enclosed proforma statement on Inter/Continental and congratulate you for this exposé which is very well done. We wish again every success for the activity.

As you most probably know, we have been able to pick up some valuable contacts for Inter/Continental when Mr. Meier went to Scotland. Everything has been explained in details to Mr. Kassin and we are also working on e.g. Catto's Whisky and to finalize Tuxedo. We have not heard from Mr. Kassin but we realize of course that he must be very busy with all his internal problems. We think, however, that the relations are now made and the ground should be laid for a good basic assortment of Inter/Continental.

When discussing the various points with English suppliers, we came over one difficulty: Probably Inter/Continental has difficulties in receiving the goods from England with the certificates issued from the manufacturer but invoiced from Basle. It would be of interest to us to know whether from the point of Inter/Continental this presents difficulties or not.

According to the enclosed credit note which you will kindly remit to Inter/Continental, we have opened an account for you and credited the $ 40'000.-- as agreed. We expect to receive the convertible bonds as soon as they are issued. This, of course, is a confirmation of what we wrote already with our letter of May 22, 1969 to Inter/Continental and not a duplication.

7

./.

Mr. Morton L. Annis, P.O. Box No. 1, T a m p a /Florida

We would also be much obliged to have your comments regarding the rights on the brand names. We have previously discussed that these brand names are owned by another firm in which Weitnauer Trading has also a participation. Your clarification on these points are appreciated.

Yours sincerely,
WEITNAUER TRADING COMPANY, LTD
e.r.

Encl.
c/N

# WEITNAUER TRADING COMPANY
LIMITED

CABLES: WEITCO BASEL
TELEPHONE: (061) 23 19 19
TELE-PRINTER: 62 194
POSTAL ACCOUNT 40-350

304A

PLAINTIFF'S EXHIBIT 7A
Inter/Continental Wine
and Spirits, Ltd.
Lake Success, New York
USA

WTC CREDIT-NOTE

Konto
Compte
Account

Our ref. TM/ss
Buchhaltung

4001 BASEL (Switzerland) July 2nd, 1969
Petersgasse 36—38

Wir teilen Ihnen mit, dass wir Ihr Konto wie folgt ERKANNT haben:
*Veuillez noter que nous passons les écritures suivantes au CREDIT de votre compte:*
We inform you that we have made the following entries to the CREDIT of your account:

| | Betrag/montant/amount |
|---|---|
| We bought from you:<br>nom. $ 40.000.-- convertible bonds of Inter/Continental Wine and Spirits, Ltd. as per telex of May 20th and 22nd 1969 (conversion in common stocks at the rate of $ 3.50 i.e. 11428 shares)<br><br>titles pending; to be sent after issue | $ 40.000.-- |

Hochachtungsvoll
*Vos dévoués* — Very truly Yours,
WEITNAUER TRADING COMPANY
LIMITED

WT 105.07

7A

305A

PLAINTIFF'S EXHIBIT 8

GRADIAZ·ANNIS

*Division of General Cigar Co., Inc.*

FACTORY NO. 1 P. O. BOX 1122 TAMPA, FLORIDA

July 10, 1969

Mr. Adolf Weitnauer
Weitnauer Trading Co. Ltd.
Basel, Switzerland 4001

Dear Adolf:

I have just heard from Mr. Ted Kaufmann that you had a meeting with Dr. Gerd Jacobs and certain situations were developed. I hope these were satisfactory to you and I shall look forward to hearing from Dr. Jacobs as to the results of this meeting.

With reference to Inter/Continental, Ronnie has been so busy with all the permits, trademarks, and developments that no doubt he has not had a chance to write you regarding the relationship between yourselves and Inter/Continental.

Ronnie and I are in agreement that you shall be given a contract to be the exclusive purchasing agent for all products produced in Europe and shipped to Inter/Continental. Under this arrangement you are protected on all matters of brands and trademarks. I, frankly, can foresee no problems in this area unless you feel that the currency regulations may somewhat restrict your movements in various countries. As far as we are concerned, whatever we purchase shall go through you and it is up to you to order the merchandise and to effect payment in whatever currency you deem most desirable. Of course, if you can use Euro dollars, which are available at some 13% yield, this would be a very wonderful situation. However, I just don't know whether Euro dollars will be accepted for these types of transactions.

We are now starting the development of our corporate papers and we herewith confirm that you will receive the Convertible Bonds; hopefully within the next few weeks we will be able to give you the complete corporate setup.

I am very enthusiastic over the fine work that has been done for Inter/Continental and Mr. Meier's help has been a great inspiration.

8

In closing, I don't know whether Ronnie has had a chance to tell Mr. Meier about the three contacts that were made for French wine through a Parisian friend of mine, John Castel. I met John at the race track and we are old friends, and he has made very interesting contacts and I hope Mr. Meier knows about these so that I can evaluate them.

Best wishes.

Sincerely yours,

GRADIAZ ANNIS

Morton L. Annis
Division President

MLA:ad
cc: R. Kassin

PLAINTIFF'S EXHIBIT 9

307A

GRADIAZ·ANNIS

*Division of General Cigar Co., Inc.*

FACTORY NO. 1 — P. O. BOX 1122 — TAMPA, FLORIDA

August 20, 1969

Mr. H. Thomann
Weitnauer Trading Co. Ltd.
Basel, Switzerland 4001

Dear Mr. Thomann:

Was delighted to hear you are coming to the States and hope you will be kind enough to call me in Tampa (my phone number is *813* 253-0667) when you arrive. I have spoken to Mr. Kassin and told him to expect a phone call from you.

Please be advised that our personal commission arrangement is a confidential matter and I know it will not be discussed in New York. Otherwise, every thing is proceeding very well. The first sales meeting was held and there are 15 salesmen starting out to sell the various products of the company.

With best wishes, and kindest regards to all, I am

Sincerely yours,

GRADIAZ ANNIS

Morton L. Annis
Division President

MLA:ad

Morton L. Annis, Sr.

POST OFFICE BOX NUMBER ONE

Tampa, Florida

F

X-10

308A

September 22, 1969

PLAINTIFF'S EXHIBIT 10

Mr. F. Meier
Weitnauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Mr. Meier:

As per our conversation, I want to give you the position of Inter/Continental insofar as the situation regarding shipments to the United States.

Your company has been kind enough to give us a $40,000 credit. Our requirements are evidently much in excess of that even not counting shipments from Curtis. Four of the owners of the company, myself, my son Morton L. Annis Jr., Ronald Kassin and Leonard Fellman, have guaranteed an obligation to our New York bank for $100,000. We will extend this guarantee to cover the shipments in question so that we can start merchandise flowing across the ocean immediately.

I herewith enclose my financial statement and when I see you in New York on Thursday we can further discuss the matter on a long-term basis.

As per your suggestion I am sending a copy of this to Adolf.

Best wishes.

Cordially,

STATEMENT OF MORTON L. ANNIS, SR.
TAMPA, FLORIDA

| Income | | Insurance | |
|---|---|---|---|
| Salary | $ 70,000 | Life | $ 835,000 |
| Dividends | 24,000 | Wife's Insurance | 500,000 |
| Tax-Exempt Income | 30,000 | | |
| | $ 124,000 | | |

**310A**

SETS

| | |
|---|---|
| SE - GCR | $ 460,000 |
| C - Founders Life | 38,000 |
| nicipal Bonds | 700,000 |
| counts Receivable | 72,000 |
| n. Deb. - Man. Ind. | 20,000 |
| sh | 15,000 |
| ferred Compensation | 50,000 |
| sidence & Furniture (1) | 150,000 |
| rs & Jewelry (1) | 50,000 |
| jets d'Art, Silver, Paintings, etc. (2) | 75,000 |
| noir Collection (3) | 250,000 |
| eeding & Racing Thoroughbreds (4) | 50,000 |
| x Credit (5) | 20,000 |
| | $1,950,000 |

ABILITIES

| | | |
|---|---|---|
| ved to Banks | | |
| Current - | $ 65,000 | |
| Deferred - | 275,000 | |
| | | 340,000 |
| | | $1,610,000 |

praised and/or insured valuation

311A

Antiques and Objets d'Art

| | |
|---|---|
| 3 original Lautrec posters | $10,000 |
| Sterling silver flatware (circa 1831) | 7,000 |
| 2 Temple ivory Foo dogs (circa 1700) | 3,000 |
| 1 Sevre centerpiece (18th Century) | 5,000 |
| 2 Sterling silver pheasants (19th Century) | 3,000 |
| 1 Sterling silver tea service (circa 1840) | 5,000 |
| 2 antique blue glass vases | 2,000 |
| Miscellaneous: Jade, silver, English porcelain, small statuary, Chinese porcelain, U.S. stamp collection, etc. | 15,000 |
| | $50,000 |

3. This is a collection of ten oil paintings by P. A. Renoir (fully authenticated and insured for $350,000). There is an offer for this collection which will bring a "net proceeds" (after Capital Gain Taxes) of $250,000. I have not accepted this offer at this time.

4. Racing and Breeding Thoroughbreds

(1) Owned Outright

| | |
|---|---|
| Stallion: Prince of Chance - Stud Fee $2,500 valued at $50,000 (due to original owner 9 years at $2,500 annual payment) Insured for: | $25,000 |
| Mares: Rose Pearl, Tootie Bug | 4,000 |
| Yearling: Filly - Bolero U out of Tootie Bug | 5,000 |
| Weanling: Colt - Tiziano out of Rose Pearl | 2,000 |

(2) 25% Share - Shakespeare Stud Syndicate

| | |
|---|---|
| 1 Broodmare in foal - 3 racing fillies | 5,000 |

(3) 25% Anzio Stable 5,000

1 Broodmare (Love Boat)
1 Colt (Royal Rajah)
1 Weanling filly

| | |
|---|---|
| (4) 1/3 of one share - Miramar Stud | 2,000 |
| (5) 1/6 share - Florida Stud | 2,000 |
| | $50,000 |

5. Carry forward tax loss from 1968

X-11

PLAINTIFF'S EXHIBIT 11

312A

Morton L. Annis, Sr.

Post Office Box Number One

Tampa, Florida

September , 1969

Weitnauer Trading Co. Ltd.
4001 Basel
Switzerland

Re: Intercontinental Wine & Spirits Ltd.
300 Marcus Avenue
Lake Success, New York 11040

Gentlemen:

This will confirm the understanding between us:

1. As an inducement to you to grant credit or assume a credit risk from time to time in respect of sales of goods made by you to Intercontinental Wine & Spirits Ltd. ("Intercontinental") or in respect of any other type of transaction by which you become the creditor of Intercontinental, the undersigned shall pay to you all amounts up to One Hundred Thousand ($100,000) Dollars (which shall be the limit of the undersigned's liability under this agreement) forthwith when due, or upon demand thereafter, with interest, and without deduction for any claim or setoff or counterclaim of Intercontinental, the full amount of all obligations or indebtednesses due to you from Intercontinental, together with all expenses of collection and reasonable counsel fees incurred by you by reason of the default of Intercontinental.

2. This is a continuing guaranty and shall be revocable only as to transactions entered into by you subsequent to the receipt by one of your officers of three (3) months prior notice of termination sent by the undersigned by registered mail.

3. The undersigned waives notice of acceptance hereof and notice of orders, sales and deliveries to Intercontinental and of the amounts and terms thereof and of all defaults or disputes with Intercontinental and of the settlement or adjustment of such defaults or disputes.

4. The undersigned, without affecting his liability hereunder in any respect, consents to and waives notice

of all changes of terms, the withdrawl or extension of credit or time to pay, the release of the whole or any part of the indebtedness, the settlement or compromise of differences, the acceptance of notes, trade acceptances or any other form of obligation for Intercontinental, and the demand, protest and notice of protest of such instruments or their endorsements.

5. If a petition for bankruptcy or an application for any other relief under any provisions of the Bankruptcy Act is filed by or against Intercontinental, or a receiver is appointed for the assets or affairs of Intercontinental, or in the event that Intercontinental shall make a general assignment for the benefit of creditors, or in the event of its insolvency, all sums due you by Intercontinental and not yet matured shall forthwith mature and forthwith be payable by the undersigned on demand.

6. The obligation of the undersigned is primary and unconditional and covers all existing and future indebtedness of Intercontinental to you. This obligation shall be enforceable before or after proceeding against Intercontinental and shall be effective regardless of the solvency or insolvency of Interncontinental at any time, the extension or modification of the indebtedness of Intercontinental by operation of law, or the subsequent reorganization, merger or consolidation of Intercontinental or any other change in the composition, nature, personnel or location of Intercontinental.

7. Nothing herein contained shall be construed as an obligation on your part to sell goods or extend credit to Intercontinental or as an obligation to continue to sell goods or extend credit. Your records showing the account between you and Intercontinental shall be admissible in evidence in any action or proceeding involving this guaranty and such records shall be prima facie proof of the items therein set forth.

8. This guaranty shall be governed by the laws of the State of New York.

9. This guaranty shall be binding upon the undersigned, his legal representatives and assigns and shall inure to your benefit and to the benefit of your successors and assigns.

Yours very truly,

Witness:

_____

_____

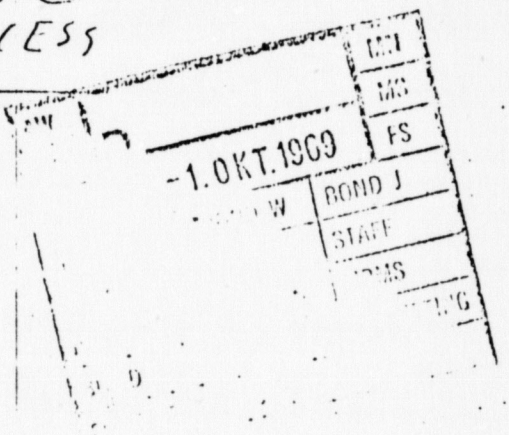
Morton L. Annis, Sr.

PLAINTIFF'S EXHIBIT 12 214A

Wltgr. INTERCONTINENTAL LAKE SUCCESS

62031

great neck ny sdz0394 27 30 213p edt




lt

weitco basel

unsigned copy of contract mailed your attention today signed contract being delivered to attorney gottlieb stewart and young 64 wallst nowyork city

interco lakesuccessny

col 64

(0750)

62194a wtc ch

PLAINTIFF

12

ID

PLAINTIFF'S EXHIBIT 13

315A

156203 OKT 6 19:59

tampaflo sdz0115 19 6 1040a edt jm3

f. meier weitco 2105

basel/switzerland

guarantee signed last week present it to your lawyer assume no ~~further~~ further difficulties advise

annis

Pl's. Ex. 12 for Iden.
6/11/71
F&C

13

Inter/ Continental

WINE AND SPIRITS LTD.

Pls. Ex. 1 for Iden. 6/11/71 (3 pages) Jacob

September 30, 1969

PLAINTIFF'S EXHIBIT 14

Weitnauer Trading Co. Ltd.
4001 Basel
Switzerland

Gentlemen:

This will confirm the understanding between us:

1. As an inducement to you to grant credit or assume a credit risk from time to time in respect of sales of goods made by you to Inter/Continental Wine & Spirits Ltd. ("Inter/Continental") or in respect of any other type of transaction by which you become the creditor of Inter/Continental, the undersigned shall pay to you all amounts up to One Hundred Thousand ($100,000) Dollars (which shall be the limit of the undersigned's liability under this agreement) forthwith when due, or upon demand thereafter, with interest, and without deduction for any claim or setoff or counterclaim of Inter/Continental the full amount of all obligations or indebtednesses due to you from Inter/Continental, together with all expenses of collection and reasonable counsel fees incurred by you by reason of the default of Inter/Continental.

2. This is a continuing guaranty and shall be revocable only as to transactions entered into by you subsequent to the receipt by one of your officers of three (3) months prior notice of termination sent by the undersigned by registered mail.

3. The undersigned waives notice of acceptance hereof and notice of orders, sales and deliveries to Inter/Continental and of the amounts and terms thereof and of all defaults or disputes with Inter/Continental and of the settlement or adjustment of such defaults or disputes.

4. The undersigned, without affecting his liability hereunder in any respect, consents to and waives notice of all changes of terms, the withdrawal or extension of credit or time to pay, the release of the whole or any part of the indebtedness, the settlement or compromise of differences, the acceptance of notes, trade acceptances or any other form of obligation for Inter/Continental, and the demand, protest and notice of protest of such instruments or their endorsements.

5. If a petition for bankruptcy or an application for any other relief under any provisions of the Bankruptcy Act is filed by or against Inter/Continental, or a receiver is appointed for the assets or affairs of Inter/Continental, or in the event that Inter/Continental shall make a general assignment for the benefit of creditors, or in the event of its insolvency, all sums due you by Inter/Continental and not yet matured shall forthwith mature and forthwith be payable by the undersigned on demand.

6. The obligation of the undersigned is primary and unconditional and covers all existing and future indebtedness of Inter/Continental to you. This obligation shall be enforceable before or after proceeding against Inter/Continental and shall be effective regardless of the solvency or insolvency of Inter/Continental at any time, the extension or modification of the indebtedness of Inter/Continental by operation of law, or the subsequent reorganization, merger or consolidation of Inter/Continental or any other change in the composition, nature, personnel or location of Inter/Continental.

7. Nothing herein contained shall be construed as an obligation on your part to sell goods or extend credit to Inter/Continental or as an obligation to continue to sell goods or extend credit. Your records showing the account between you and Inter/Continental shall be admissible in evidence in any action of proceeding involving this guaranty and such records shall be prima facie proof of the items therein set forth.

8. This guaranty shall be governed by the laws of the State of New York.

Weitnauer Trading Co. Ltd. September 30, 1969

9. This guaranty shall be binding upon the undersigned, his legal representatives and assigns and shall inure to your benefit and to the benefit of your successors and assigns.

Yours very truly,

Ronald Kassin
President

Morton L. Annis, Sr.

Witness:

Howard Kassin .

PLAINTIFF'S EXHIBIT 15

[illegible]ER-TRADING COMPANY
LIMITED

INTER/ CONTINENTAL
WINE + Spirits Ltd
L a k e Succes

319A

DEBITORENKONTO

Konto № 22565

| Lanl | Datum | Beleg-Nr. | | Text | Beleg-Datum | Valuta | Soll | | Umsatz | SALDO |
|---|---|---|---|---|---|---|---|---|---|---|
| 202.71 | AUG 30'69FA | .01 | IC | | | 14.08 | 202.71 | | .00 | 202.71 |
| | OKT 17'69FA | .02 | IC | PARTS | | 10.10 | 10,[illegible]4.90 | | | |
| | OKT 17'69FA | .06 | IC | | | 10.11 | 2,[illegible]0.80 | | | |
| | OKT 17'69FA | .07 | IC | | | 10.10 | 5,[illegible]4.80 | | | |
| | OKT 17'69FA | .12 | IC | | 15,10 | 30.12 | 1,000.00 | | | |
| | OKT 17'69FA | .13 | IC | | 15,10 | 30.12 | 1,000.00 | | .00 | 31,[illegible]9.61 |
| [illegible] | OKT 17'69FA | .01 | IC | [illegible]ELLETTAC | | 16.11 | .00 | | .00 | 31,[illegible]9.61 |
| | OKT 31'69FA | .03 | IC | PART. | 28,10 | 07.11 | 3,496.40 | | | |
| | OKT 31'69FA | .04 | IC | | 15,10 | 31.12 | 2,502.50 | | | |
| | OKT 31'69FA | .08 | IC | | 20,10 | 20.10 | 20.15 | | | |
| | OKT 31'69FA | .09 | IC | | 20,10 | 15.01 | 9,317.50 | | | |
| | OKT 31'69FA | .10 | IC | | 22,10 | 10.01 | 78.30 | | .00 | 47,024.26 |
| 024.26 | OKT 31'69FA | .16 | IC | | 21,10 | 16.11 | 10,711.80 | | | |
| | OKT 31'69FA | .18 | IC | | 15,10 | 31.12 | 1,787.50 | | | |
| | OKT 31'69FA | .21 | IC | | 27,10 | 17.10 | 10,301.50 | | | |
| | OKT 31'69FA | .22 | IC | | 27,10 | 17.10 | 10,916.95 | | .00 | 80,742.01 |
| 742.01 | OKT 31'69FA | .15 | IC | | 5,11 | 30.11 | 5,253.60 | | | |
| | NOV 25'69FA | .17 | IC/A | | | 20.11 | 2,533.90 | | | |
| | NOV 25'69FA | .17 | IC/C | | | 20.11 | 843.50 | | | |
| | NOV 25'69FA | .17 | IC/D | | | 20.11 | 304.00 | | | |
| | NOV 25'69FA | .17 | IC/E | | | 20.11 | 962.50 | | | |
| | NOV 25'69FA | .19 | IC | | 10,11 | 30.12 | 8,605.50 | | | |
| | NOV 25'69FA | .20 | IC | | 10,11 | 30.12 | 8,605.50 | | | |
| | NOV 25'69FA | .24 | IC | | 14,11 | 17.11 | 75.78 | | | |
| | NOV 25'69FA | .25 | IC | | 18,11 | 31.01 | 1,158.00 | | | |
| | NOV 25'69FA | .26 | IC | | 18,11 | 31.01 | 2,106.00 | | | |
| | NOV 25'69FA | .27 | IC | | | 5.11 | 37.32 | | .00 | 111,227.01 |
| 227.01 | NOV 25'69FA | .02 | IC | REST | 27,11 | 17.02 | 3,444.00 | | | |
| | NOV 25'69FA | .03 | IC | REST | | 20.11 | 1,494.50 | | | |
| | NOV 25'69FA | .27 | IC | | 26,11 | 30.12 | 224.17 | | .00 | 118,570.[illegible] |
| | NOV 25'69FA | .14 | IC | | 24,11 | 27.04 | 2,150.00 | | | |

ER TRADING COMPANY
LIMITED

INTER/ CONTINENTAL
Wine + Spirits Ltd
LAKE SUCCES

320A

NEW YORK
No 32565

2

| ani | Datum | Beleg-Nr. | Text | Beleg-Datum | Valuta | Soll | Haben | Vm. | SALDO |
|---|---|---|---|---|---|---|---|---|---|
| | NOV 2316 | .171 | C/8 | | 20.11 | 346.50 | | | |
| 7.16 | NOV 2316 | .231 | C | 27,11 | 17.02 | 20,180.40 | | .00 | 140,097.16 |
| 2.92 | DEZ 3016 | | S.B.C. | | 22.12 | | 4,134.26 | .00 | 135,962.92 |
| 2.92 | DEZ 3116 | .051 | C | | 31.12 | 3,180.00 | | .00 | 139,142.92 |
| 2.92 | DEZ 3116 | | ZINS DEZ. 2 SEMESTER | | 31.12 | 700.00 | | .00 | 139,842.92 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | |

WINE & SPIRITS LTD
LAKE SUCCES

Nr 32305

321A

3

| anl | Datum | Beleg-Nr. | Text | Beleg-Datum | Valuta | Soll | Haben | Umsatz | SALDO |
|---|---|---|---|---|---|---|---|---|---|
| | FEB 16'71BB | 16.23 | CHECK | | 28.01 | | 500.00 | | |
| | FEB 16'71BB | 16.23 | | | 28.01 | | 500.00 | | |
| | FEB 16'71BB | 16.23 | | | 28.01 | | 500.00 | | |
| | FEB 16'71BB | 16.23 | | | 28.01 | | 500.00 | | |
| 38.73 | FEB 16'71BB | 16.23 | | | 28.01 | | 500.00 | .00 | ~~159,000.73~~ |
| 38.06 | FEB 16'71BB | | SALDOKORRIGTUR | | | | | .00 | 173,462.06 |
| | MRZ 29'71BB | 35.22 | STORNO SCHECK | | 28.01 | 500.00 | | | |
| 62.06 | MRZ 29'71BB | 35.22 | STORNO SCHECK | | 28.01 | 500.00 | | .00 | 174,462.06 |
| | MRZ 30'71UW | 34.96 | S.B.C./ RETPUR CHECK | | 28.01 | 1,000.00 | | | |
| | MRZ 30'71UW | 34.96 | SBC SPESEN | | 19.03 | 2.00 | | | |
| | MRZ 30'71UW | 34.95 | SBC RETOUR CHECK | | 28.01 | 500.00 | | | |
| | MRZ 30'71UW | 34.95 | SBC SPESEN | | 22.03 | 1.00 | | | |
| | MRZ 30'71UW | 34.94 | SBC RET UR CHECK | | 19.03 | 500.00 | | | |
| | MRZ 30'71UW | 34.94 | SBC SPESEN | | 19.03 | 1.00 | | | |
| | MRZ 30'71UW | 34.93 | SBC RETOUR CHECK | | 28.01 | 500.00 | | | |
| 67.06 | MRZ 30'71UW | 34.93 | SBC SPEEN | | 19.03 | 1.00 | | .00 | 176,967.06 |
| | MRZ 30'71UW | 36.75 | SBC RETOUR CHECK | | 28.01 | 500.00 | | | |
| 68.06 | MRZ 30'71UW | 36.75 | SBC SPESEN | | 23.03 | 1.00 | | .00 | 177,468.06 |
| | | | U/Kreditnote | 5.07 | | | 6.309.46 | | 171.158.60 |

322A

PLAINTIFF'S EXHIBIT 16

Mr. Ronald A. Kassin
INTER/CONTINENTAL
WINE AND SPIRITS LTD
3000 Marcus Avenue

Lake Success /N.Y.

U.S.A.

PURCH ME/wk

October 8, 1969

Dear Mr. Kassin,

We had a telephone conversation with Mr. Keiser and we believe that, as we have also expressed in previous correspondence, the financing problem for Inter/Continental is not finally solved, particularly not for the first few months, as long as the direct import system does not work.

In order to assist you to the maximum, we are prepared to step in with another

$ 30'000.--

under the condition that the same guarantees are given as for the $ 100'000.-- in writing, e.g. a separate commitment in the amount of $ 30'000.-- with the same wording. As soon as we have your and Mr. Morton Annis Sen.'s signature, you can use this money under the same conditions as outlined in our letter of September 30, 1969 (please return approved copy of this letter).

It is not necessary that this guarantee passes through Mr. Cottlieb, when the wording is the same. Please airmail directly to us.

Yours sincerely,

WEITNAUER TRADING COMPANY LTD

pp

PLAINTIFF

16

323A

# Inter/ continental

WINE AND SPIRITS LTD.

PLAINTIFF'S EXHIBIT 17

October 13, 1969

Mr. Fritz Meier
Weitnauer Trading Company, Ltd.
4001 Basel,
Switzerland

Dear Mr. Meier:

We are in receipt of your letter explaining the details for an additional $30,000 line of credit.

As soon as Mr. Kassin returns from his current business trip, a guarantee similar to the one you have received for $100,000 will be forwarded to you.

Under separate cover, we are sending a price schedule which will outline all items that you are handling for us.

Sincerely yours,

INTER/CONTINENTAL
WINE AND SPIRITS,LTD.

Howard Keiser
Executive Assistant

PLAINTIFF
17

PLAINTIFF'S EXHIBIT 18 324A

AIR MAIL

# WEITNAUER TRADING COMPANY

LIMITED

CABLES: WEITCO BASEL
TELEPHONE (061) 23 19 19
TELE-PRINTER: No 62 194

WTC

Mr. Morton L. Annis
Division President
P.O. Box 1122
Tampa / Florida
U.S.A.

YOUR REF.

OUR REF. TM/dn

4001 BASEL, (SWITZERLAND)
PETERS GASSE 36

November 4, 1969

Dear Mr. Annis,

I was glad to hear from Mr. A.P. Weitnauer that we shall have the pleasure of your visit in Basle on November 20, 1969. I think that we shall have an opportunity to learn from you how business operations of Inter/Continental, Wine and Spirits Ltd., are developing. I hope that despite the initial difficulties everything is now running satisfactorily.

May I seize this opportunity to remind you that the matter of the Convertible Bond is still pending. I would be grateful, indeed, if you could bring this document with you.

Mr. F. Meier has written directly to Mr. Kassin, as per enclosed copy, regarding the purchasing functions of Weitnauer Trading Company Ltd. and the agency of Tuxedo Whisky.

Mr. Kassin recently asked Weitnauer Trading Company Ltd. for an additional credit of $ 30.000.-. We informed Mr. Kassin that, for this purpose, we would need the same engagement signed by yourself and Mr. Kassin, as this was done for the $ 100.000.-, for which we already possess the guarantee.

I am looking forward to meeting you soon in Basle so as to discuss all these pending questions.

Sincerely yours,
WEITNAUER TRADING COMPANY LTD.

H. Thomann
Vice-President

Encl.: 1 copy

18

X - 19

cc.: TM

PLAINTIFF'S EXHIBIT 19 325A

Mr.
Morton Annis
P.O. Box 1
T A M P A / Florida
U.S.A.

PURCH ME/re January 13, 1970

Dear Mr. Annis,

During your visit in Basle we discussed Inter/Continental and you mentioned that after your return you would let us have a general information regarding the financial and profit position, which we have not received so far.

We have now an urgent problem. Inter/Continental has placed further orders with suppliers which we have to guarantee. We have been rather surprised to see that they are placing orders pledging on the guarantee, although they must have known that the limit is committed.

When cabling them, they answered that they are prepared to increase the guarantee from $ 100'000.-- to $ 150'000.--. Before finally answering, could you please give us some more informations.

Sincerely yours,
WEITNAUER TRADING COMPANY LTD.
e.r.

Curtis
Total $3675. -
American Airlines 13/7.

PLTFS
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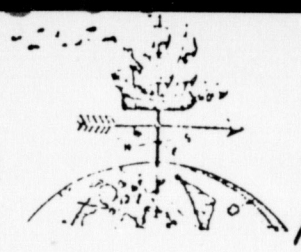
EVID



inter/ 326A
continental

6)

PLAINTIFF'S EXHIBIT 20
Pl's. Ex 2 for Iden
6/11/71
Ide 6

January 14, 1970

Weitnauer Trading Co., Ltd.
4001 Basel
Switzerland

Gentlemen:

This will confirm the understanding between us that our agreement dated September 30, 1969 is amended as follows:

Paragraph 1 - is amended to a limit of $150,000 from the present limit of $100,000, all other items remain the same.

INTER/CONTINENTAL
WINE AND SPIRITS, LTD.

Ronald Kassin, President

Morton Annis

Leonard Fellman



20

Morton L. Annis, Jr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

327A 4c

Pl's Ex 11 for ident
6/11/71
Feb

PLAINTIFF'S EXHIBIT 21

January 19, 1970

Mr. F. Meier
Weitnauer Trading Co., Ltd.
4001 Basel, Switzerland

Dear Mr. Meier:

I have just received your letter of January 13, and I immediately called Ronnie Kassin and he tells me he has this matter settled with you. The Financial Statement should be ready very shortly and I am certainly in agreement to raise this to $150,000.

If you have any further questions, please let me hear from you.

Best wishes.

Cordially,

21

AIR MAIL

# WEITNAUER TRADING COMPANY

LIMITED

328A

CABLES WEITCO BASEL
TELEPHONE (061) 23.19.19
TELE-PRINTER No 62 194

WTC

PLAINTIFF'S EXHIBIT 22

INTER/CONTINENTAL
Wine + Spirits Ltd.
3000, Marcus Avenue

LAKE SUCCESS, N.Y.

Att.: Mr. Ronald Kassin

YOUR REF. OUR REF. PURCH/ME-pt 4001 BASEL/SWITZERLAND PETERSGASSE 36 February 5th, 1970

Dear Mr. Kassin,

We refer to the question of the payment guarantee and confirm our today's cable reading as follows:

"payment guarantees pending can only be released when constant flow of payments working do not want to go in longterm financing writing

weitco"

The whole matter has been thoroughly discussed within the board of our company and on basis of the extended guarantee ($ 50'000 additional) which you have sent us recently and your statement which we have also received. As it has been agreed as a principle, the guarantee which we release on basis of our agreements have not the meaning that our company does participate in the longterm financing of Inter/Continental. Our credit should help you in a way that with the guarantee of Weitnauer Trading Company you can finance a certain part of the turn-over of Inter/Continental. We understand perfectly the reasons why you had at the beginning of the year a substantial inventory, but we believe that by now a large part of these goods is being sold and the money should now come in a constant flow.

Please find enclosed our statement showing a credit in our favour of $ 139'842.92 for invoices which are partly all paid by us. We have guaranteed some more payments calculated on the said cost price and not taking into account the purchase commission in order to be of a maximum assistance to you. So far, we have only received a payment of $ 4100.--.

92

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HITLER/CONTINENTAL
LAKE SUCCESS 2/ 5-2-70

We might possibly go above $ 140'000 when we can really see that the whole thing is going as we said to be a regular flow. Should you therefore be able to give us estimated payment-terms, please let us know.

Looking forward to hearing from you we remain, dear Mr. Kassin,

Yours very truly,

WEITNAUER TRADING COMPANY LIMITED

F. Meier R. Amstutz

Copy to: Mr. Morton Annis, P.O.B. 1, Tampa/Florida

Morton L. Annis, Jr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

February 25, 1970

PLAINTIFF'S EXHIBIT 23 330A

Mr. H. Thomann
Weitnauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Mr. Thomann:

I just spoke with Mr. Ronald Kassin and he tells me that he has been in touch with Mr. Meier and Mr. Meier has been advised of our new banking arrangements with Bankers Trust in New York and that everythink is now in order.

Best wishes, and kindest regards to you and all my dear friends in Switzerland.

Sincerely,

Morton L. Annis, Sr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

March 31, 1970

331A

PLAINTIFF'S EXHIBIT 24

Mr. F. Meier
Weitnauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Mr. Meier:

Have just read your letter of March 25 and have spoken to Mr. Kassin and he is sending you $4,500 and from then on regular weekly payments of $2,500.

Inter/Continental is going along very well with over $100,000 of sales for the month of March, which is traditionally a small month, and I look forward to a volume of between $2,000,000 and $3,000,000 annually.

I am sure that as more distributors are opened and business grows they will be in a strong cash position. I have high hopes and confidence and appreciate the fine cooperation you have given this young company.

Sincerely yours,

cc: R. Kassin

X-25

332A

PLAINTIFF'S EXHIBIT 25

GRADIAZ·ANNIS

*Division of General Cigar Co., Inc.*

FACTORY NO. 1 P. O. BOX 1122 TAMPA, FLORIDA

June 19, 1970

Mr. Adolphe P. Weitnauer
Weitnauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Adolphe:

Please accept my belated apologies for my delay in writing you, and I hope you will share this letter with my many good friends in your organization who have written congratulating me on my new assignment as President of General Cigar International.

First of all a few personal notes: My son is in the Air Force Reserve for this month here in Tampa. My happily married daughter was showing the very beautiful present that you and Marie Louise sent her, just last week, to a few of her friends. She said, "This comes all the way from Basel!" which sounded to her friends as if this beautiful city was some exotic place south of the Philippines!

Saw Ramon in New York day before yesterday and he looks very well and is now enroute to Jamaica.

I would like to discuss three matters in this letter; one, being General Cigar International, the second, Gradiaz Annis of Jamaica, and the third, Inter/Continental Wine & Spirits.

In my new position as President of General Cigar International, I am taking over from Ted Kaufmann and Julius Strauss as Mr. Strauss is near retirement and Ted is so deeply involved with the sensational new product now being sold in the States, called Tijuana Smalls. This is an entirely new product in the cigar industry and best could be described as a small Tiparillo in regular, menthol, and aromatic. Packed 10 to the box and retailing at 39¢, we are now selling 1,000,000 a week in New York City for this is a very exciting new venture to General Cigar Company. Incidentally, it should be of interest that despite the drastic stock market slump, General Cigar

TF 25 ID

is the only stock that has held up over the last few months. In fact, it was 19 in January and it is now close to 40. This certainly is a great showing of confidence by the American investor in our company.

As you know, I have always tried to work out something with General Cigar International with your company and I am happy that I did succeed in getting you an extra 5% discount even though the overall agreement did not go through. I do believe that we should now reconsider your activities with General Cigar International and perhaps you can give me a guide of of what you have in mind and how we can get together to work out something of importance to you in the areas in which you operate. I will await your advice on this with much interest.

With reference to Gradiaz Annis of Jamaica, the difficult situation in Cuba and the decreased production has boomed the sales of Jamaican cigars, particularly with the BAT whose La Tropical brand is doing a very impressive worldwide business. Our sales of Macanudo in the United States have captured 25% of the market on imported cigars in our second year and based upon our ability to produce these in volume we could probably do more business.

The reason I bring up Jamaica is that Oettinger have asked to have the franchise for Macanudo not only in Switzerland, but in other countries and also are interested in our Gold Label brand which, you know, is of such great importance here in the United States. I know you will buy a few Creme De Jamaica and I want to know what your attitude is towards this move not only in our Jamaican cigars, but on our Gold Labels.

Now, with reference to Inter/Continental, I must admit that I have not been very close to the picture as I have been travelling consistently and, in fact, many letters that have come to me from your company fail to catch up with me on my travels.

Ronnie Kassin will be in Basel the weekend of July 4 and at that time he will make satisfactory arrangements with you for for the continuing supplies of your products. This company is really starting to roll and the volume is jumping every month. They really only started to do business in February and if they can ship all the orders they have on hand for the month of June they will do close to $200,000 worth of business. In addition to the lines fromEurope they are doing very well with products from England and domestic Gin, Vodkas and Scotch bottled in the States.

Last week I had a meeting in New York with some prominent people who are interested in putting in more capital and we should hear from them shortly.

I know that you are in need of cash as everyone is and we certainly will have the complete picture for you when Ronnie comes to Basel. He will advise you as to the exact arrival time.

We have just opened up a subsidiary operation in the State of Florida and they are going to push Tuxedo Scotch, and I believe the areas where we have placed Tuxedo have repeated well. Hopefully we can get a good volume item in this brand because the product is really excellent.

I believe this covers all open matters, and I would once again ask you and my good friends in Basel to accept my apologies for my tardiness in writing. I am closing this letter with my very best wishes to all and very deep thanks for your cooperation and would hope that we should do great business together in all our areas of interest.

Sincerely yours,

GRADIAZ ANNIS

Morton L. Annis, Sr.
Division President

MLA,Sr:ad

PLAINTIFF'S EXHIBIT 26

335A

Morton L. Innis, Sr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

July 30, 1970

Mr. H. Thomann
Weitnauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Mr. Thomann:

I want to write you with reference to Inter/Continental and bring you up to date as to what has transpired.

We have had two offers of Equity Capital. One from a group of present stockholders who are willing to put up $175,000 in cash for an additional 17% of the company, which will give them a total of 33% of the outstanding Common Stock. Along with this Capital is a collateral position for payment of Import Duties amounting to approximately $100,000.

The other offer is from a large importer who operated in the Far East, who is willing to buy 50% of the company for a consideration of about $500,000; this amount to be paid in over the next two years.

I wholly agree with you that the company is under-capitalized and I have been trying to get additional equity money and I know that with the above mentioned groups willing to participate, we should be able to select one of them who will give us the necessary finances. There is a meeting next Thursday with the first group in New York (which I shall attend) and this coming weekend, the importer will give us his position.

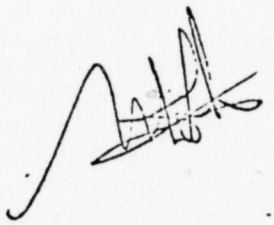
We are having prepared an inventory of merchandise which has been supplied by your company to Inter/Continental. We shall have a third person ascertain the accuracy of this

and it is my suggestion that we use our accountants. This, of course, requires quite a bit of work which has been going on for the last few weeks.

When we are in receipt of this additional financing, substantial payment shall be made to you immediately, and I would hope you would bear with us until we have had a chance to meet with these two parties.

You will receive a cable from me sometime by the end of next week, after our meetings, advising you of the status of these matters. In the meantime, best wishes and kindest regards to all.

Sincerely yours,



CC: L. Fellman
R. Kassin

PLAINTIFF'S EXHIBIT 27

- 337A

Leonard Frederick Fellman
300 EAST 40TH STREET
New York City, N. Y. 10016

September twentieth, 1970

Weitnauer Trading Company
4001 Basel
Peters Gasse 36
Switzerland

Dear Mr. Thomann:

I have your various letters with reference to Inter/Continental. As of last evening I took over as the operating head of the company.

Mr. Kassin is no longer associated with the organization and their have been serious problems with the manner in which he conducted the business.

Particularly with the bank there were serious difficulties with invoices that have no substance in fact and other items that have caused heavy losses.

We have now cut our overhead substantially and are on the road to progress as our sales are holding up well.

Our accountants in view of the situation are now doing a complete audit of the business and this should be in our hands next week.

We are at this moment planning to make payments over a long range to all those to whom we owe money and this will enable us to vercome a loss of well over 400,000 dollars.

Our first payments to all of the companies mentioned in your letter will be on October fifteenth, and this shall continue for a monthly period until the amounts are paid off.

We do hope that on new shipments the shippers will maintain the present terms so that our flow of business will be maintained while we are reducing our indebtedness.

With reference to the artwork on Tuxedo, this was sent to you originally and you did print the labels in Basel.

I also attach herewith the band that we have selected.

Be assurred of my desire to cooperate and see a successful business relationship.

Very truly yours,

Fellman

I. Fellman
30/4/70

057/42 32 20

ID

X-28

PLAINTIFF'S EXHIBIT 28

338A

Mr. Morton L. Annis
Post Office Box Number One
T a m p a / Florida
USA

TM/ss

September 22nd,197o

Dear Mr. Annis,

We revert to our letter of August 21st, 197o. Unfortunately we are still without any news regarding the availability of capital for Inter/Continental. On August 24th Mr. Leonard Fellman wrote a letter to Mr. A.Weitnauer promising to provide him shortly with a full background of all operations, to which Mr. F. Meier replied on September 14th, 197o, with copy to your address.

As you will see from the enclosed statement of account

| | |
|---|---|
| Inter/Continental owes WTC up to date | $ 165'258.73 |
| + 9% interest until August 31st, 197o | $ 9'237.47 |
| total amount due up to 31.8.7o | $ 174'496.2o |

As you know, this sum has been overdue for some time. There have been no part-payments.

You will understand that in these circumstances we are no longer prepared to continue our activity on behalf of Inter/Continental should said firm not fulfil its financial obligations. We deplore this situation and shall inform Inter/Continental accordingly, letting them know that it is our intention to terminate our agreements with them. At the same time we must insist on payment of the amounts due to us, be it through Inter/Continental or, should they not be in a position to fulfil their obligations, by making use of the existing guarantee on our behalf. However, before taking such steps we should like to lay the whole problem before you, asking you at the same time

TFH. EVID 28

./.

for your opinion in case you can still see a solution for Inter/Continental to get out of its difficulties.

Awaiting your early reply, we remain, Dear Mr. Annis,

Sincerely yours,

WEITNAUER TRADING COMPANY LTD.

(H. Thomann)

enclosure

statement of account

...ER TRADING COMPANY ...

LIMITED

340A PLAINTIFF'S EXHIBIT 29

CABLES: WEITCO BASEL
TELEPHONE (061) 23 19 19
TELE-PRINTER No 62 194

WTC

Mr. Morton L. Annis
Post Office Box Number One
T a m p a / Florida
USA

YOUR REF.

OUR REF. TM/ss

4001 BASEL (SWITZERLAND) PETERS GASSE 30, October 6th, 197o

Dear Mr. Annis,

Unfortunately we received no answer to our letter of September 22nd, 197o, with regard to Inter-Continental. However, we received a letter from Mr. Leonard F. Fellman, dated September 28th, 197o as per attached photostatic copy. Mr. Fellman states therein:

> "I am attaching our form letter which has been accepted by all creditors."

This form letter was not included. As a matter of principal we must state that the arrangements have taken place between yourself and us. For this reason we must ask you to keep us informed on the situation of Inter-Continental, as we are of the opinion that the situation gets more and more obscure.

Friday, October 2nd, we tried in vain to reach you on the phone in Tampa or New York.

We are no longer in a position to grant any further respite to Inter-Continental. We kindly ask you to take the necessary steps so that we may receive the outstanding amount this month, be it through you - based on your guarantee with us - or through Inter-Continental. We earnestly request you comply with our today's demand and are looking forward to your information.

We can only decide on an eventual further purchasing-activity on behalf of Inter-Continental after having received the amounts due to us, mentioned in our letter of September 22nd, 197o.

We remain, Dear Mr. Annis,

Sincerely yours,
WEITNAUER TRADING COMPANY LTD.

H. Thomann

(H. Thomann)

29

copy to Mr. A. Weitnauer

PLAINTIFF'S EXHIBIT 30

341A

X - 30

A/1

Morton S. Lewis, Sr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

October 13, 1970

Mr. H. Thomann
Weitnauer Trading Co. Ltd.
Basel, Switzerland

Dear Mr. Thomann:

As you and I are aware, Leonard Fellman is now [illegible] of Inter/Continental and Mr. Kassin is under [illegible] for fraud and embezzlement. This unfortunate [illegible] developed without my knowledge and Mr. [illegible] done an outstanding job in reorganizing the [illegible] getting additional capital, trimming down [illegible] and I think we are financially on the way to [illegible] and profitable organization.

Unfortunately, my constant travelling has [illegible] fron getting deeper into this situation but Mr. [illegible] has all the facts and I will ask him to send you [illegible] letter and give you a breakdown of the entire [illegible]

Please believe me that I have not been avoi[illegible] have not been here but I have, however, high[illegible] of a good situation now developing for 1970 [illegible] for an excellent 1971.

Sincerely,

cc: L. Fellman

PLTF'S EVID
30 ID

PLAINTIFF'S EXHIBIT 31

342A X-31 1/ AW - 21 ME - 31 TM - RB +

Morton L. Sims, Sr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

November 16, 1970

Mr. H. Thomann
Weitnauer Trading Co. Ltd.
Basel, Switzerland 4001

Dear Mr. Thomann:

As you know, we have had a great many problems in Inter/Continental due to the criminal actions of Mr. Kassin, and no doubt he will end up in jail very shortly. However, we are reorganizing the company with more capital and Mr. Leonard Fellman is the Managing Officer and is making real progress towards getting this company back on its feet.

I am asking Mr. Fellman to give you a complete rundown on the status of the company and my suggestion is that he travel to Switzerland some time during the early part of the year to sit down and make whatever arrangements are necessary.

As you can imagine, this has been a terrible situation for all of us but I think we have the backing and the ability to work out everything.

With kindest regards, I am

Sincerely yours,

PLTF'S EX 31 ID EVID

PLAINTIFF'S EXHIBIT 32 - 343A

AIR MAIL

# WEITNAUER TRADING COMPANY

LIMITED

CABLES: WEITCO BÂSEL
TELEPHONE: (061) 23 19 19
TELE - PRINTER: Nº 62 194

WTC

Mr. Morton L. Annis
Post Office Box Number One
T a m p a / Florida

YOUR REF. OUR REF. TM/ss

4001 BASEL (SWITZERLAND) November 18th, 197o
PETERS GASSE 36

Dear Mr. Annis,

We revert to our letter, dated November 5th, 197o. In the meantime we received a letter from Mr. Leonard F. Fellman, dated November 10th, 197o, as per enclosed copy.

We are sorry to say that we cannot be satisfied with being refunded by means of small checks, as mentioned in Mr. Fellman's letter. By the way, none of these checks reached us up to now.

We have to repay different considerable credits to our bankers before the end of this year and we are, therefore, in urgent need of funds. Should Inter/Continental not be in a position to fulfil their obligations towards us, you would oblige us by being helpful. By this we mean that you then would certainly make use of the existing guarantee in our favour and proceed to the necessary transfer on our behalf.

We thank you already in advance for your kind consideration and assistance in this rather unpleasant matter.

With kind regards, we remain, Dear Mr. Annis,

Sincerely yours,

WEITNAUER TRADING COMPANY LTD.

2

copy to Mr. Leonard F. Fellman

WEITNAUER TRADING COMPANY LTD.
BASEL - SWITZERLAND

*Management*

Basle, December 9, 1970 AW/hz

Mr. Morton L. Annis
Post Office Box Number One
T a m p a / Florida
USA

Dear Morton,

I wish to revert to your letter of November 16, 1970, addressed to Mr. H. Thomann, as well as to Mr. Fellman's letter of November 17, 1970, of which I enclose copy.

During the past 12 months we have repeatedly drawn your attention to the fact that Inter-Continental never effected the money-transfers as stipulated in our contracts. We have never entered any engagement to grant a loan to Inter-Continental, but it was always understood that WTC would deliver the goods with limited credit-facilities and that the means resulting from the sales of the goods would be used to pay WTC's invoices, which, I am sorry to say, has never been done. On several occasions, we tried to receive part-payments, yet, without any results. Nevertheless, we considered it our duty to continue our relationship with Inter-Continental and this in virtue of the personal guarantees you issued in favour of WTC of US$ 100'000.- on September 30, 1969 and of further US$ 50'000.- on January 14, 1970, thus totalling US$ 150'000.-.

Under the present circumstances, I regret to have to inform you that we can no longer content ourselves with promises for part-payments, but that I must insist on WTC being refunded with the total outstanding amount before the end of 1970. Capital is getting scarce not only in the United States, but also in Switzerland. The sum due to us is lacking in our financial planning and, without the money in our possession by the end of this year, we would get into difficulties, which, I am sure, is not your intention.

I am confident that you will understand our position and I would appreciate your taking the necessary steps for the execution of the transfer before the end of this year, be it through you personally on the basis of the afore-mentioned guarantees in favour of WTC, be it through Messrs. Inter-Continental themselves. In case of non-payment, I am afraid that I would have to make use of your personal guarantees in favour of WTC.

With best regards,

Sincerely yours,

C. A. Weitnauer

PLAINTIFF'S EXHIBIT 34

345A

Morton L. Innis, Sr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

December 16, 1970

Mr. Adolphe P. Weitnauer
Weitnauer Trading Company Ltd.
4001 Basel, Switzerland

Dear Adolphe:

I am going to suggest that Leonard Fellman come visit with you or Mr. Thomann as soon as possible after the first of the year. I think it is important that you two know the situation that has developed with reference to Mr. Kassin and with reference to new financing. Rather than get involved in any legal situations at this time, I would hope you would agree to have this meeting and work out something to our mutual satisfaction.

Best wishes, and kindest regards.

Sincerely,

cc: Mr. L. Fellman

PLAINTIFF'S EXHIBIT 35

346A

cc. LM
ME
LM

Mr. Morton L. Annis
Post Office Box Number One

T a m p a / Florida
USA

TM/ss

December 31st, 197o

Dear Mr. Annis,

Mr. Leonard Fellman paid us a visit on December 29th and explained to us the difficult financial situation of Inter-Continental Wine & Spirits Ltd. He handed over to us the following three orders of payment:

$ 1.ooo.-- per December 29th, 197o,
$ 5oo.-- per January 15th, 1971,
$ 5oo.-- per January 31st, 1971.

These orders of payment will be cashed through our bank and we shall credit the account of Inter/Continental Wine & Spirits Ltd. upon receipt of the amounts.

We have informed Mr. A. Weitnauer of Mr. Fellman's visit and our finance department just had a meeting on this subject.

We regret to have to insist on being paid with the amount of $ 15o.ooo.--, guaranteed by you. We urgently need said overdue amount the first days of January 1971 as we have our own obligations to fulfil.

For this reason we sent you yesterday the following telegram:

" REFERRING VISIT MR FELLMAN STOP
NEED URGENTLY BEFORE END OF YEAR 197o
DOLLARS ONE HUNDRED AND FIFTY THOUSAND
PLEASE ARRANGE TRANSFER SWISS BANK
CORPORATION NEW YORK AND CONFIRM

WEITNAUER TRADING COMPANY LTD. "

We are very sorry, but we see no other possibilities to overcome the present difficulties, and we kindly ask you

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LTCIS 35 ED

to remit urgently said amount to our account with Swiss Bank Corporation, New York. We are convinced that you will honour your obligations and remain, with kind regards,

Sincerely yours,

WEITNAUER TRADING COMPANY LTD.

(H. Thomann)

INTER/CONTINENTAL WINE & SPIRTS, LTD.
PAYROLL
283 ROBINS LANE SYOSSET, N. Y.

348A

5007

1-315
260

12-29- 1970

PAY TO THE ORDER OF Weltman Trading Co — $1000.00

One thousand dollars — DOLLARS

National Bank of North America
1400 BROADWAY NEW YORK, N. Y.

⑆0260⑆0315⑆ 010 1⑈6276⑈7⑈

---

INTER/CONTINENTAL WINE & SPIRTS, LTD.
PAYROLL
283 ROBINS LANE SYOSSET, N. Y.

5008

1-315
260

Jan 15 1970

PAY TO THE ORDER OF Weltman Trading Co — $500.00

Five hundred ⁰⁰/₁₀₀ DOLLARS

National Bank of North America
1400 BROADWAY NEW YORK, N. Y.

⑆0260⑆0315⑆ 010 1⑈6276⑈7⑈

---

INTER/CONTINENTAL WINE & SPIRTS, LTD.
PAYROLL
283 ROBINS LANE SYOSSET, N. Y.

5009

1-315
260

Jan 30 1970

PAY TO THE ORDER OF Weltman Trading Co — $500.00

Five hundred ⁰⁰/₁₀₀ DOLLARS

National Bank of North America
1400 BROADWAY NEW YORK, N. Y.

⑆0260⑆0315⑆ 010 1⑈6276⑈7⑈

PLAINTIFF'S EXHIBIT 36

**349A**

*Morton L. Innis, Sr.*
POST OFFICE BOX NUMBER ONE
*Tampa, Florida*

Pl's. Ex 9 for ID
6/11/71
JDC

January 18, 1971

Mr. Harry A. Gottlieb
64 Wall Street
New York, New York 10005

Dear Sir:

I have your letter of January 12, 1971 and have referred this matter back to Weitnauer Trading Co., in Basle, because there are many facets of this particular situation which may not be known to you.

First, the guarantee is by three people and there are very definite limitations on this guarantee.

I have made a counter-offer to Weitnauer as of this date and would suggest this matter can be clarified to everyone's satisfaction without the necessity of legal action.

Very truly yours,

PLAINTIFF'S EXHIBIT 37 350A x - 61

Pl's Ex 8 for Ident
6/11/71
pages) tdeb

Morton L. Innis, Jr.
FIRST FLORIDA BANK BUILDING
Tampa, Florida 20-1-71

January 18, 1971

Mr. H. Thomann
Weitnauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Mr. Thomann:

I am now back in Tampa and Leonard Fellman has told me about his visit with you and about his agreement with you regarding the outstanding debt. Before we go into details, let me refresh your memory as to the status of the guarantee. First of all this guarantee was agreed to by three parties, Mr. Kassin, Mr. Fellman and myself. An amount of $40,000 was frozen as this was allocated to purchase an option to buy stock when the company went public. An additional $60,000 was credit given to the company and any amount over $100,000 was jointly guaranteed by the three individuals.

The company has now turned around under Mr. Fellman's direction and I understand from Mr. Fellman that you have received $2,000 covering the period to January 30 and checks covering February are being sent to you in the like amount. Also, this matter will be stepped up and will be increased "dramatically."

I certainly don't encourage any legal action which will require a long and arduous situation, with particular reference to finding Mr. Kassin who is in a very difficult situation. It would seem to me that this matter can be worked out with interest being paid on the loan and if necessary, an assignment of the accounts receivable and the inventory which are now controlled by me and amount to over $200,000.

I grant you this has been a very difficult situation but I further submit to you that it can be worked out without reference to legal action.

PLTF'S 37 TD

I received a letter from an attorney, Harry A. Gottlieb, and I am writing him as per the enclosed copy. I do not think it in order to send a copy of this letter to Mr. Gottlieb and would suggest you communicate with him.

Cordially yours,

Pls Ex 5 for Ident
6/11/71
Jacb

Morton L. Innis, Jr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

352A
PLAINTIFF'S EXHIBIT 38

January 19, 1971

Mr. Adolphe P. Weitnauer
Weitnauer Trading Co. Ltd.
4001 Basel, Switzerland

Dear Adolphe:

I want to write you this personal letter because I have been away from Tampa since Christmas time, and the surprising turn of events with reference to the lawyer's letter I received yesterday prompts me to write this long, urgent message. Do not think for one moment that any of us are indifferent to the obligations of Inter/Continental to your company. It was because of this that Mr. Fellman travelled to Basel to see your associates and my last understanding was that he had made satisfactory arrangements with them for not only a program of liquidating the old debt, but of renewing operations with your company. Consequently, when I returned to Tampa and saw the communications mentioned above I got in touch with Mr. Fellman, who is now planning to return to Basel this month to have meetings with you personally, a as Mr. Thomann and to explore this matter in greater de

I wrote a letter to Mr. Thomann yesterday and I would urge you, Adolphe, not to get involved in legal actions in the United States because it is a very expensive, complicated and lengthy process. This, of course, is compounded by the status of Mr. Kassin, who is a guarantor and whose status has been explained to you.

The company has taken a dramatic turn-around with Leonard Fellman doing unbelievable things; for example, decreasing the overhead from $60,000 a month to $15,000 a month, with a dramatic increase in sales volume and gross profits. I urge you to be patient on this matter and let us work something out to your satisfaction without involvement in legal proceedings.

I hope you will give this matter your consideration and will meet with Mr. Fellman in Basel and I will ask him to advise you well in advance when he can travel to your city.

38

This is not a very happy letter for me to write you, Adolphe, as the activities of Mr. Kassin were completely unknown to me and his embezzlement activities were just unbelievable, but I know we can get back on our feet and would ask your continuing co-operation and assistance in working out these problems.

Sincerely yours,

PLAINTIFF'S EXHIBIT 39 354A X-57

Pl's. Ex 4 for ID 6/11/71 sdeb

Norton S. Simon, Sr.
POST OFFICE BOX NUMBER ONE
Tampa, Florida

February 19, 1971

Mr. H. Thomann
Weitnauer Trading Co., Ltd.
4001 Basel, Switzerland

Dear Mr. Thomann:

Let us review the position that faces us and examine the background. I am not now, nor have I ever been, a director or an official of Inter/Continental. I have never received any remuneration from them and my personal stock holdings are approximately 10% of the outstanding common stock. I have absolutely nothing to do with the operation of the company, have never sold a case of liquor for them, and with the exception of the local distributor, who is an old friend of mine, I do not know any of the customers. Obviously, you can realize my position in the company.

This whole situation developed when Adolphe asked me to assist him in the sale of Tuxedo Scotch whisky in the United States and I put him in touch with the officials of the new company. Since that time I have had almost no activity in the matter, with the exception of a very few casual meetings, one in Switzerland and seeing you briefly in the States, and having dinner with Mr. Meier. So, you can see that I am really an outsider in this situation. Certainly, your organization had every opportunity to keep in close touch with Inter/Continental on matters of payment; credit, etc., etc.

I do recall one very important situation which should be recalled to your memory and that is the original meeting held when your Mr. Lehman was there and he suggested, or someone in the meeting suggested, that your company invest $40,000 in Inter/Continental for common stock. I said that due to the speculative situation of a new company, I would suggest you freeze permantly a line of credit of $40,000 and for this you would get an option to buy $40,000 worth of stock when the company goes public. This you agreed to, as per your credit note of May 22, 1969.

PLTFFS EX 39 ID

There is another matter to consider with reference to the $150,000 due and that is that there is a commission of 10% which should be paid to Inter/Continental, which, of course, should be deducted from this amount. In addition, certain moneys have been paid to you by Inter/Continental which also should be deducted.

There remains on hand about $75,000 worth of merchandise shipped by you which certainly can be returned for credit as these are "in Bond" and not duty paid.

I at no time stated that you could call upon me for a payment of $150,000 to cover the debt of Inter/Continental. This was never done in writing or orally, I have never signed any guaranty with you or with any supplier. (Incidentally, I will tell you that Mr. Kassin forged my name to a document with Wertheimer and prosecution is now being carried on in the State of New York.)

Insofar as a law suit is concerned, this is utterly ridiculous and my final suggestion is that you hold everything in abeyance until I can send a representative to Switzerland to discuss the matter and have the proper representative from Inter/Continental work out a payment schedule for you. This should be sometime in early March.

I think the worst think that can happen is that we fall out and have law suits. Inter/Continental is in position to start to send you money and they have been paying you every month as far as I know. Their payments can be stepped up as the year goes on and I think this is a wise suggestion.

The company is doing very well and they have eight wholesale salesmen in New York City and 30 wholesale accounts throughout the United States, which are growing every day.

Please give this matter your consideration and let me hear from you.

Sincerely,

PLAINTIFF'S EXHIBIT 40

356A

September 30, 1960

[illegible]elthower Trading Co. Ltd.
[illegible]el
Switzerland

Gentlemen:

This will confirm the understanding between us:

1. As an inducement to you to grant credit or assume a credit risk from time to time in respect of sales of goods made by you to Inter/Continental Wine & Spirits Ltd. ("Inter/Continental") or in respect of any other type of transaction by which you become the creditor of Inter/Continental, the undersigned shall pay to you all sums up to One Hundred Thousand ($100,000) Dollars (which shall be the limit of the undersigned's liability under this agreement) forthwith when due, or upon demand thereafter, with interest, and without deduction for any claim or setoff or counterclaim of Inter/Continental the full amount of all obligations or indebtednesses due to you from Inter/Continental, together with all expenses of collection and reasonable counsel fees incurred by you by reason of the default of Inter/Continental.

2. This is a continuing guaranty and shall be revocable only as to transactions entered into by you subsequent to the receipt by one of your officers of three (3) months prior notice of termination sent by the undersigned by registered mail.

3. The undersigned waives notice of acceptance hereof and notice of orders, sales and deliveries to Inter/Continental and of the amounts and terms thereof and of all defaults or disputes with Inter/Continental and of the settlement or adjustment of such defaults or disputes.

[illegible] Trading Co. Ltd. September 30, 1949

4. The undersigned, without affecting his liability hereunder in any respect, consents to and waives notice of all changes of terms, the withdrawal or extension of credit or time to pay, the release of the whole or any part of the indebtedness, the settlement or compromise of differences, the acceptance of notes, trade acceptances or any other form of obligation for Inter/Continental, and the demand, protest and notice of protest of such instruments or their endorsements.

5. If a petition for bankruptcy or an application for any other relief under any provisions of the Bankruptcy Act is filed by or against Inter/Continental, or a receiver is appointed for the assets or affairs of Inter/Continental, or in the event that Inter/Continental shall make a general assignment for the benefit of creditors, or in the event of its insolvency, all sums due you by Inter/Continental and not yet matured shall forwith mature and forthwith be payable by the undersigned on demand.

6. The obligation of the undersigned is primary and unconditional and covers all existing and future indebtedness of Inter/Continental to you. This obligation shall be enforceable before or after proceeding against Inter/Continental and shall be effective regardless of the solvency or insolvency of Inter/Continental at any time, the extension or modification of the indebtedness of Inter/Continental by operation of law, or the subsequent reorganization, merger or consolidation of Inter/Continental or any other change in the composition, nature, personnel or location of Inter/Continental.

7. Nothing herein contained shall be construed as an obligation on your part to sell goods or extend credit to Inter/Continental or as an obligation to continue to sell goods or extend credit. Your records showing the account between you and Inter/Continental shall be admissible in evidence in any action or proceeding involving this guaranty and such records shall be prima facie proof of the items therein set forth.

8. This guaranty shall be governed by the laws of the State of New York.

[illegible] Theatrical Co., Ltd. September 28, 1959

9. This agreement shall be binding upon the undersigned, his [illegible] representatives and assigns and shall inure to your benefit and to the benefit of your successors and assigns.

Yours very truly,

Ronald Kassin
President

Morton L. Annis, Sr.

Witness:

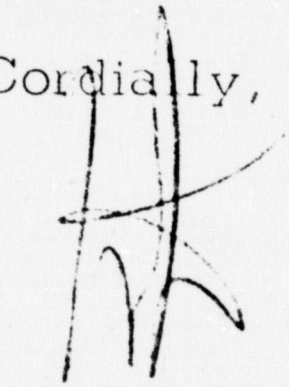
359 A

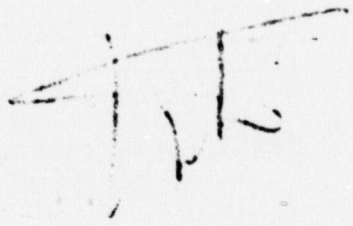
PLAINTIFF'S EXHIBIT 41A

Questioned

Letter
Jan. 19
1970
F. Meier

Cordially,





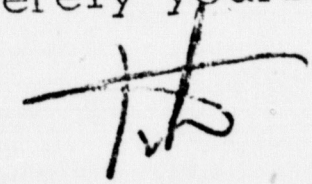
Known
Letters
Feb. 19
1971
(Thomann)

Jan. 19
1971
(A.P. Weitmauer)

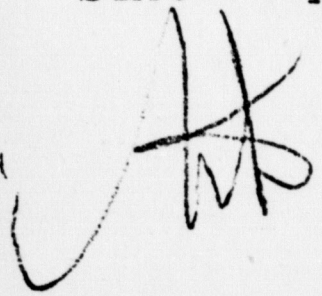
Dec. 16
1970

Oct. 13,
1970

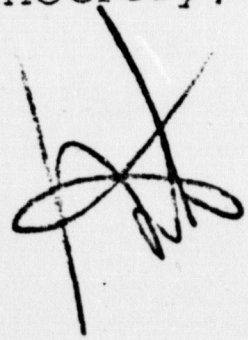
Sincerely yours,



Sincerely,



Sincerely,



Sincerely,

Sincerely you

GRADIAZ ANNIS

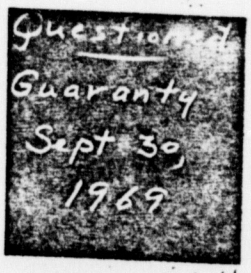
GRADIAZ ANNIS

Morton L. Annis
Division Presid

GRADIAZ ANNIS

360A

PLAINTIFF'S EXHIBIT 41




Morton L. Annis, Sr

Morton L.

Cordially yours

360A1

Letters
July 30
1970

Sept
22
1969

Cordially

UNKNOWN
Notes
Oct. 16,
1968

SOUTHERN DISTRICT OF NEW YORK



----------X

WEITNAUER TRADING COMPANY, LTD.,

Plaintiff,

File No. 71 Civ. 782

-against-

MORTON L. ANNIS,

AFFIDAVIT

Defendant.

----------X

STATE OF NEW YORK )
COUNTY OF NEW YORK) ss.:

MORTON L. ANNIS, being duly sworn, deposes and says:

1. I am the defendant named in the above entitled action and I make this affidavit in opposition to plaintiff's motion for summary judgment and for other relief.

2. This action purports to be based upon two documents allegedly guaranteeing the obligations of a New York corporation engaged in the wholesale wines and spirits distribution business to the plaintiff. I have never held any office or directorship in Inter-Continental Wine & Spirits Ltd. My relationship with that corporation arises solely from the fact that I am an investor in that corporation and a minority stockholder and that I have made substantial loans to the corporation. My own loans to the corporation to date exceed $450,000.00.

3. Of the two purported "Guaranty" agreements, the second dated January 19, 1970 and referred to in the moving papers as

"Second Guaranty" is a patent forgery and I unequivocally state that it was never signed by me. With respect to the First Guaranty, the plaintiff relies upon the fact that I have no recollection of having signed it but recognize that the signature appears to be mine. While, therefore, I am accordingly unable to deny the validity of my signature, I do not feel that that inability should relieve the plaintiff of its burden of proving that I did sign the instrument. I assure both the plaintiff and the Court that if the plaintiff's proof of the circumstances under which it received the guaranty should refresh my recollection, I am of sufficient substance and integrity to be candid with the Court and the plaintiff in admitting the execution of the instrument if that should turn out to be wh occurred.

4. Admittedly there was correspondence and conversation with respect to methods by which the plaintiff could be assured of payment of indebtedness which might be incurred by Inter-Continental. The nature of the guaranty that was being discussed initially is shown by plaintiff's Exhibit "3", a letter from me to the plaintiff of September 22, 1969 in which I undertook to extend a guaranty which I had already made to a New York bank sufficiently to cover plaintiff's shipments. It was in that connection and under cover of that letter dated September 22, 196 that I furnished the plaintiff with the statement annexed to the moving papers as Exhibit "F" with respect to my financial resources. It should be noted that Exhibit "3" refers specifically to that statement as well as to the Bank guaranty.

5. Plaintiff's moving papers also seek to rely upon Exhibit "8", a letter written by me to plaintiff, in which I stated that "this guar-

antee was agreed to by three parties, Mr. Kassin, Mr. Fellman and myself". Reference back to Exhibit "3" will show that the bank guaranty therein referred to, which I offered to extend for plaintiff's benefit, was made by those three parties.

6. While the plaintiff does not seek relief on this motion with respect to the Second Guaranty, it does repeatedly cite that guaranty "for purposes of continuity and disclosure of knowledge by defendant of his First Guaranty". In view of the repeated reference to the Second Guaranty, I consider it advisable to note here that Ronald Kassin, the former president of Inter-Continental, who allegedly furnished the Second Guaranty to the plaintiff and who is no longer a part of management of the company, similarly furnished another unrelated forged guaranty on my signature to another supplier, a matter which I referred to the District Attorney.

7. Even if the First Guaranty is ultimately found to have been signed by me, there would be no liability on that guaranty, which by its terms is limited to $100,000.00, for the following reasons:

(a) $40,000.00 of the ostensibly guaranteed amount is covered by a credit note issued by the plaintiff in that amount, copy of which is annexed hereto as Exhibit "A". That credit note was sent to me for transmittal to Inter-Continental under cover of plaintiff's letter dated July 3, 1969, copy of which is annexed hereto as Exhibit "B".

(b) The plaintiff and I entered into an arrangement evidenced by a memorandum, annexed hereto as Exhibit "C", which provided in substance that we entered into a joint venture for the marketing of spirits in the United States

and Europe with the plaintiff handling the purchasing in various European countries and with myself handling sales in the United States. As will be noted from the memorandum, the net profit of those sales was to be divided equally between the plaintiff and myself.

That memorandum constituted the basis of the relations between plaintiff and myself.

8. Annexed hereto as Exhibit "D", is a letter from the plaintiff to Inter-Continental dated November 3, 1969 with enclosure confirming that the plaintiff was to be paid a 10% commission on all purchases made by Inter-Continental through plaintiff in Europe. Plaintiff has never accounted to me under the agreement for those commissions as to which I would be entitled to one-half or 5%. Further, the plaintiff has never paid me any amounts under the joint venture agreement notwithstanding that plaintiff engaged in a substantial business and made sales involving hundreds of thousands of dollars as to which I would have been entitled to share equally in plaintiff's 10% commission.

I respectfully submit that any amount owing to me under the agreement which is the subject of the counterclaim in this action would have to be credited against the amounts due from me under the guaranty.

9. I am informed and believe that the 4% promotional account which was charged against Inter-Continental in accordance with the letter of November 3, 1969, annexed hereto as Exhibit "D" was a method of additional compensation to plaintiff and accordingly I submit that I am entitled to 50% of those amounts for which plaintiff has never accounted to me.

10. It should be noted that the counterclaim asser[illegible] in the answer and based upon my joint venture agreement with the pl[illegible] do not constitute "any claim or set-off or counterclaim of Inter/Con[illegible]ental" which the plaintiff claims would be cut off by the express te[illegible] of the guaranty agreement. The claim is personal to me and I submit that I should not be required on this motion for summary judgment to be subjected to a liability which might be wiped out by the plaintiff's obligation to me on the counterclaim.

11. The credit note issued by the plaintiff in the amo[illegible] of $40,000, it is submitted, falls in the same category as payment[illegible] a guarantor should not be held liable for payment made [illegible] any more that would have been the case in the event of c[illegible]

12. Further, however, the plaintiff seeks [illegible] guarantor for an obligation of Inter-Continental which Inte[illegible] disavows and as to which Inter-Continental has rejected t[illegible] and holds the same for the plaintiff's account.

13. The basis for the rejection was that the merchandise which had been furnished by plaintiff was unsalable and defective. I am informed and believe that Inter-Continental has taken the position in pend[illegible]ing Chapter XI reorganization proceedings, that it is not liable for the purchase price of that merchandise and that it, Inter-Continental, has a claim against the plaintiff for the deficiency. In that connection, Inter-Continental cites the fact that of a total of some $110,000 of the plaintiff's merchandise which was sold at auction in California only $35,000 was realized because of the poor quality of the spirits which plaintiff had

furnished. In short, Inter-Continental takes the position that the amount claimed by the plaintiff never became payable to the plaintiff by Inter-Continental because the merchandise contracted for had never been furnished. Plaintiff's position now is that Inter-Continental's defense to the liability itself is not available to a guarantor. I submit that as guarantor I would not be liable for payment of amounts which Inter-Continental never became liable to pay because of plaintiff's default. That deficiency accounts for $60,000 of the plaintiff's claim.

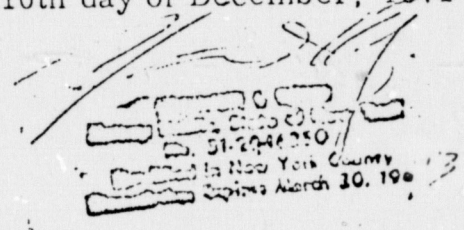
14. Finally, it should be noted that plaintiff's moving papers wholly fail to establish that Inter-Continental owes the plaintiff $171,000 or any amount. Other than conclusory statements of the plaintiff's officer, plaintiff does nothing more than annex to the moving papers a photocopy of some pages in the German language appearing to be ledger pages but without any translation of the individual transactions. These pages are alleged to be "plaintiff's statement of account to Inter-Continental" but plaintiff makes no showing as to when and where such statement of account was presented to Inter-Continental nor is there even any statement that the transactions which a translation of Exhibit "E" might show actually took place. If the plaintiff claims it delivered merchandise to Inter-Continental, those facts are not shown anywhere in the plaintiff's moving papers and particularly not in the alleged statement of account, Exhibit "E". The few English words which appear include "interest 9%" without any indication as to the basis for such interest addition. No invoices are shown or any other primary record that would constitute evidence admissable at a trial. There is no indication as to what response, if any, Inter-Continental made when Exhibit "E" was presented to it if that presentation was ever made.

15. For the foregoing reasons, plaintiff's motion should be wholly denied.

Morton L. Annis

Sworn to before me this

10th day of December, 1971



# WEITNAUER TRADING COMPANY
LIMITED

CABLES: WEITCO BASEL
TELEPHONE: (061) 23 19 19
TELE-PRINTER: 62 194
POSTAL ACCOUNT 40-350

368A

Inter/Continental Wine
and Spirits, Ltd.
Lake Success, New York
USA

WTC

## CREDIT-NOTE

Konto
Compte
Account

Our ref.
Buchhaltung
TM/ss

4001 BASEL (Switzerland)
Petersgasse 36—38
July 2nd, 1969

Wir teilen Ihnen mit, dass wir Ihr Konto wie folgt ERKANNT haben:
*Veuillez noter que nous passons les écritures suivantes au CREDIT de votre compte:*
We inform you that we have made the following entries to the CREDIT of your account:

| | Betrag/montant/amount |
|---|---|
| We bought from you:<br>nom. $ 40.000.-- convertible bonds of Inter/Continental Wine and Spirits, Ltd. as per telex of May 20th and 22nd 1969 (conversion in common stocks at the rate of $ 3.50 i.e. 11428 shares)<br><br>titles pending; to be sent after issue | $ 40.000.-- |

Hochachtungsvoll
*Vos dévoués* — Very truly Yours,
WEITNAUER TRADING COMPANY
LIMITED

WT 105.07

AIR MAIL

# WEITNAUER TRADING COMPANY

LIMITED

CABLES: WEITCO BASEL
TELEPHONE: (061) 23 19 19
TELE-PRINTER: No 62 194

WTC

369A

Mr. Morton L. Annis
P.O. Box No. 1
T a m p a /FLORIDA
U.S.A.

YOUR REF. OUR REF. PURCH ME/wk 4001 BASEL, (SWITZERLAND) PETERS GASSE 36 July 3, 1969

Dear Mr. Annis,

We refer to your letter of June 16, 1969 with enclosed profor... statement on Inter/Continental and congratulate you for this exposé which is very well done. We wish again every success ... the activity.

As you most probably know, we have been able to pick up some valuable contacts for Inter/Continental when Mr. Meier went to Scotland. Everything has been explained in details to Mr. Ka... in and we are also working on e.g. Catto's Whisky and to finalize Tuxedo. We have not heard from Mr. Kassin but we realize of course that he must be very busy with all his internal problems. We think, however, that the relations are now made and the ground should be laid for a good basic assortment of Inter/Continental.

When discussing the various points with English suppliers, we came over one difficulty: Probably Inter/Continental has difficulties in receiving the goods from England with the certificates issued from the manufacturer but invoiced from Basle. It would be of interest to us to know whether from the point of Inter/Continental this presents difficulties or not.

According to the enclosed credit note which you will kindly remit to Inter/Continental, we have opened an account for you and credited the $ 40'000.-- as agreed. We expect to receive the convertible bonds as soon as they are issued. This, of course, is a confirmation of what we wrote already with our letter of May 22, 1969 to Inter/Continental and not a duplication.

./.

370A

Mr. Morton L. Annis, P.O. Box No. 1, T a m p a /Florida

We would also be much obliged to have your comments regarding the rights on the brand names. We have previously discussed that these brand names are owned by another firm in which Weitnauer Trading has also a participation. Your clarification on these points are appreciated.

Yours sincerely,
WEITNAUER TRADING COMPANY LTD
e.r.

Encl.
c/n

Between



Mr. Morton Annis, .....
(hereafter M.A.)

and

Messrs. Weitnauer Trading Company Ltd., 36/38, Petersgasse, Basle/Switzerland
(hereafter WTC)

it is decided as follows:

1. Goal:
Creation of proper trade marks of spirits. Sale of such spirits and other trade marks of spirits to importers in the United States, ~~especially to The Charro Roja Company, New York.~~

2. Trade Marks:
M.A. investigates the possibilities with regard to the trade marks to be registered and the respective labels.

3. Registration of the trade marks:
The registration of the trade marks which are free for registration takes place through the lawyer of M.A. on behalf of WTC (or eventually other suitable firms). The trade marks thus registered are property 50:50 of both parties concerned. The legal rights of M.A. with regard to his 50% share will be stipulated in a separate contract.

4. Purchase:
WTC is in charge of the purchase of spirits in various European countries.

5. Sale:
M.A. is in charge of the sales' organisation of spirits in the United States, the conditions being as follows:

./.

a) Exclusive sales rights are granted to importers, especially to the Charro-Roja Company, New York, for a long period of about 15 years, based on a specific annual minimum turnover. (WITH OPTION TO RENEW)

b) Delivery against letter of credit.
OR SATISFACTORY BANKING ARRANGEMENT.

6. Accounts:

WTC sets up quarterly accounts as follows:

account of sales
./. sales commission
= net sales result

./. purchase price of the sold products
= gross profit

./. effective expenses of M.A. and WTC, viz.:

- taxes for trade marks
- lawyer's fees
- costs for designs
- material: labels
  corks
  bottles

./. effective expenses with regard to:

- trips for purchasing purposes
- interest on invested capital
- eventual losses
- various expenses

The remaining balance (net profit or net loss) will be shared 5o:5o by M.A. and WTC.

7. Business policy:

The choice of the trade marks, the buying and selling policy, will be set up jointly by M.A. and WTC.

a) Exclusive sales rights are granted to importers, especially to the Charro-Roja Company, New York, for a long period of about 15 years, based on a specific annual minimum turnover. (with option to renew)

b) Delivery against letter of credit.
OR SATISFACTORY BANKING ARRANGEMENT.

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./. purchase price of the sold products
= gross profit

./. effective expenses of M.A. and WTC, viz.:

- taxes for trade marks
- lawyer's fees
- costs for designs
- material: labels
  corks
  bottles

./. effective expenses with regard to:

- trips for purchasing purposes
- interest on invested capital
- eventual losses
- various expenses

The remaining balance (net profit or net loss) will be shared 50:50 by M.A. and WTC.

7. Business policy:

The choice of the trade marks, the buying and selling policy, will be set up jointly by M.A. and WTC.

WTC D

374A

Mr. Ronald A. Kassin
Inter/Continental
Wine and Spirits Ltd.
3000 Marcus Avenue

Lake Success /N.Y.

U.S.A.

PURCH ME/wk November 3, 1969

Dear Mr. Kassin,

We are pleased to send you herewith, with a delay which you will please excuse:

Proposition for a letter which you will please send to us, confirming the purchasing agreement. You have submitted us, when being in New York, a similar letter, wherein also the financial side regarding bonds have been mentioned. In our opinion, these two things should not be mixed. Otherwise, we think that the wording is in conformity with your intentions.

We mentioned in this letter a 10 % commission, as agreed, whereby the understanding is that 4 % are credited here to an Inter/Continental account at your disposal for promotion expenses.

We also submit you a contract for exclusive distribution for TUXEDO Whisky in confirmation of the provisional agreement which we have confirmed previously in writing. Please return 1 copy duly signed.

We hear that Mr. Morton Annis is coming to see us on November 20, 1969 and you can perhaps remit to him the documents.

We remain, dear Mr. Kassin,

Yours very truly,
WEITNAUER TRADING COMPANY LTD
pp

Encl.

c: Mr. Morton Annis, Tampa

D R A F T

Papier Inter/Continental
Letterhead Inter/Continental

375A

Messrs.
Weitnauer Trading Company Ltd.,
4001 Basel / Switzerland

Gentlemen:

Referring to previous negociations with your Company, we herewith confirm that we appoint you as our Purchasing Agent for liquor products produced in Europe.

In this capacity, you will use your connections you have in the European wine and spirit trade to procure us competitive offers for products in said line.

You will use your best efforts to provide us with first class exclusive agencies for such products for sale throughout the United States.

You will negociate with the European suppliers the best possible delivery and credit terms to help us in building up our business in the United States.

On request you will assist us in the shipment of the products in question. It is, however, understood that for acting according to our instructions you do not assume any responsability also in this respect.

In recognition of all these and other efforts that you may undertake as our Purchasing Agent for Europe, we grant you a commission of 10 % to be calculated on your suppliers invoice price. Your invoice to us for the respective goods shall include your commission.

Any change of this commission has to be agreed upon in writing.

This agreement shall remain in force until December 31st, 1970, and shall continue thereafter for indefinite period unless terminated at the end of the initial period or after that at any time by 60 days prior written notice given by either of a party.

May we ask you to kindly sign and return to us the counterpart of this letter, duly signed on your behalf.

Yours very truly,
Wine and Spirits Ltd.

PLAINTIFF'S EXHIBIT 43

376A

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| WEITNAUER TRADING COMPANY, LTD., Plaintiff, | ) | |
| vs. | ) | No. 71 Civ. 782 |
| MORTON L. ANNIS, Defendant. | ) | |

The deposition of RONALD A. KASSIN, called by the plaintiff for examination, pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before SEYMOUR L. WOLFE, a Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, at Suite 4400, One IBM Plaza, Chicago, Illinois, on the 31st day of May, A.D. 1973, commencing at 10:00 a.m.

PRESENT:

MESSRS. WIKLER, GOTTLIEB, TAYLOR & HOWARD,
(40 Wall Street, New York, New York 10005), by:
MR. VICTOR A. KOVNER,
appeared on behalf of the Plaintiff;

MESSRS. NEWMAN, RICH, KRINSLY, POSES, KATZ & LILLIENSTEIN,
(99 Park Avenue, New York, New York 10016), by:
MR. MAXWELL J. LILLIENSTEIN,
appeared on behalf of the Defendant.

43

377A

# INDEX

| WITNESS | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| RONALD A. KASSIN | 3 | 19 | 34 | 41 |

# EXHIBITS

| Plaintiff's Exhibit | Marked |
|---|---|
| A | 8 |
| B | 12 |
| C | 35 |
| D | 38 |
| E | 40 |

(The witness was duly sworn.)

MR. LILLIENSTEIN: The usual stipulations?

MR. KOVNER: The usual stipulations. We reserve all objections except as to form, and I will supply you with copies.

RONALD A. KASSIN,

called as a witness herein on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KOVNER:

Q Mr. Kassin, where do you reside?

A 1809-G Wildberry Drive, Glenview.

Q And where are you now employed?

A Browne Vintners, 6160 North Cicero, in Chicago.

Q Mr. Kassin, were you, at one time, associated with a company known as Inter/Continental Wine and Spirits, Ltd.?

A Yes.

Q When did you first become associated with that firm?

A Approximately June, '69.

Q And in what capacity?

A President.

Q How did you come to be the president of that company?

A I was appointed by the Board of Directors.

Q Were you employed initially at the suggestion of one of the Directors or stockholders of that company? How did you first come into contact with that company?

A I had met Mr. Annis several months prior and we had discussed the formation of a company for distilled spirits, and it turned out to be Inter/-Continental, and I left the employ of Schenley Industries to become president of this company.

Q When you say "Mr. Annis," you mean Morton L. Annis, Sr.?

A Right.

Q The defendant in this proceeding?

A Right.

Q Were you familiar with the negotiations between Inter/Continental Wine and Spirits, Ltd., and Weitnauer Trading Company, Ltd., --

A Yes.

Q -- the plaintiff?

A Yes.

Q Were you familiar with the request of Weitnauer for a personal guarantee of certain individuals in connection with a transaction between Inter/Continental and Weitnauer?

A Yes.

MR. LILLIENSTEIN: Could you identify as to the time, the approximate time?

MR. KOVNER: Yes.

BY MR. KOVNER:

Q During the summer of 1969, were you familiar with those discussions?

A Yes.

Q Tell us your recollection of there came to be a guarantee drafted with respect to the guarantee of obligations of Inter/Continental by certain persons to Weitnauer Trading Company.

MR. LILLIENSTEIN: Mr. Kovner, with respect to the form of the question, would you first establish whether or not there were one or more, and if so, how many guarantees, how many are we discussing?

MR. KOVNER: Okay.

BY MR. KOVNER:

Q Let me ask you first: Are you familiar with

one or more guarantees --

A Yes.

Q -- that were executed?

A Yes.

Q How many guarantees?

A Two.

Q When you say "two," are you saying that there were two guarantees issued in favor of Weitnauer Trading Company?

A Yes, there was one for $100,000, and then when we hit the limit and went over the limit, there was an additional -- I don't remember if it was 50 or 40, about that.

Q Were there guarantees in addition to those two guarantees issued as to other parties?

A Guarantees, I do not believe so.

Q Were there any bank guarantees or --

A There were bank guarantees, but not to trading companies or suppliers.

Q I see.

Now, I will ask you with respect to the preparation of the first of the two guarantees in favor of Weitnauer Trading Company, do you recall the discussions that led to the preparation of a

form of guarantee?

A I will give it to you basically, and I may not hit all the points.

We had --

MR. LILLIENSTEIN: May I at this point suggest the introduction of a document so that we can know what we are talking about?

MR. KOVNER: Okay.

BY MR. KOVNER:

Q I will ask you to look at a Xerox copy of a letter guarantee dated September 30, 1969, consisting of three pages, addressed to Weitnauer Trading Company, Ltd., previously marked as Plaintiff's Exhibit 1, for identification, at the examination of the defendant-- the examination beforetrial of the defendant, Morton L. Annis, conducted in 1971.

(The document was tendered to Mr. Lillienstoin, and then to the witness.)

BY THE WITNESS:

A Yes, I am familiar with this one.

BY MR. KOVNER:

Q I ask you to turn to the third page. The first signature that appears on that --

MR. LILLIENSTEIN: Excuse me. Would you

have that marked for identification in this examination?

MR. KOVNER: Yes, by all means.

Would you mark this as Plaintiff's Exhibit A at this examination?

(WHEREUPON, said document was marked Plaintiff's Exhibit A, for identification, as of 5/31/73.)

BY MR. KOVNER:

Q I ask you to turn to Page 3 of Plaintiff's Exhibit A, and ask you if you recognize the first signature on that page?

A Yes. Yes, it is mine.

Q It is your signature?

A Yes.

Q Do you recall signing this document?

A Yes.

Q Do you recall the circumstances -- the negotiations which led to the preparation of this document?

A Yes.

Q Could you briefly summarize them?

A During the summer of '69, Mr. Annis, who was at that time with General Cigar, had a working --

some type of working arrangement with Weitnauer in regard to tobacco, and that type of thing, and when we formed Inter/Continental, Weitnauer was also involved in distilled spirits and wines, and I know Mr. Annis had been over there once, maybe twice, maybe more, I don't remember, to see these people, and they agreed that they would come up with a hundred thousand dollars if they could get a personal guarantee.

Q When you say "come up with a hundred thousand dollars," --

A A hundred thousand dollar line of credit.

Q Against which they would deliver?

A Certain goods that we had -- certain merchandise that we had discussed.

Q Do you recognize the second signature on that page?

A Yes, I believe that's Mr. Annis'.

Q Do you recognize the third signature?

A That I know is Howard Keiser's.

Q Do you recall the circumstances surrounding your signing of that document?

A I believe the Weitnauer people had been in, and before they would do any shipment, they wanted this document, and I believe the document was

signed by Mr. Annis and myself at the office of Inter/Continental, and was witnessed by Mr. Keiser.

Q Do you recall seeing Mr. Annis signing it?

A Yes.

Q And do you recall seeing Mr. Keiser sign the witness statement?

A Yes.

Q There is a third blank line on that page. Do you know why?

A No.

Q What happened after this document was executed? To whom was it delivered, do you know?

A I believe it was hand delivered at that time to one of the gentlemen from Weitnauer -- would you care to mention some of the names of the people offhand?

MR. KOVNER: Off the record.

(WHEREUPON, discussion was had off the record.)

BY MR. KOVNER:

Q To the best of your recollection --

A It was given to Mr. Meier.

Q Is that Mr. Fritz Meier, from Weitnauer?

A Yes.

Q Was he one of the representatives of Weitnauer --

A Yes.

Q -- in New York in late September, 1969, in connection with this matter?

A When you say "New York," he was in New York on a trip, but he was not in New York representing them on a permanent basis.

Q I see.

Following the delivery of this document, were goods then shipped --

A Yes.

Q -- by Weitnauer to Inter/Continental?

A Via Inter/Continental, to Inter/Continental, because we had arrangements with other firms that were guaranteed by Weitnauer.

Of course, we had arrangements with a couple of people in England to ship us Scotch, and upon our placing an order with them, and Weitnauer's guarantee, they shipped us; Weitnauer did not ship us.

Q I see.

Had goods been shipped prior to the execution of this guarantee?

A I don't believe so, because I remember our

first shipments came in very late for the holiday season, so they came in probably November or December, so I don't believe anything of importance was shipped prior to this.

Q So was it in reliance upon the execution of this personal guarnatee that Weitnauer began to --

A I believe so.

Q -- began to provide the goods?

A Yes.

MR. KOVNER: I would like to have marked for identification as Plaintiff's Exhibit B, a letter on Inter/Continental stationery, to Weitnauer Trading Company, dated January 14, 1970, previously marked as Plaintiff's Exhibit 2, for identification, at the 1971 examination before trial of the defendant, Morton L. Annis, Sr.

(WHEREUPON, said document was marked Plaintiff's Exhibit B, for identification, as of 5/31/73.)

MR. KOVNER: Would you like to read back the last question and answer?

(WHEREUPON, the record was read by the reporter as requested.)

MR. LILLIENSTEIN: The question, I would

object to that question on the ground that it would appear to call for a conclusion.

MR. KOVNER: Let me rephrase it.

BY MR. KOVNER:

Q Had Inter/Continental been informed that Weitnauer would not arrange for the shipment of goods unless they received the personal guarantee of Morton L. Annis, Sr.?

A To the best of my knowledge, yes.

MR. KOVNER: You have seen Exhibit B, [illegible]? That's the '70 letter.

(The document was tendered to Mr. Lillienstein.)

MR. LILLIENSTEIN: Yes, and I think it also ought to be marked as an Exhibit.

MR. KOVNER: Yes, he did it. It is marked as B.

MR. LILLIENSTEIN: Okay, fine.

BY MR. KOVNER:

Q Mr. Kassin, I ask you to look at Plaintiff's Exhibit B, and ask if you recall ever having seen that document before?

A Yes.

Q Is the first signature on that document yours?

A Yes.

Q Is the third signature on that document that of Leonard Fellman?

A Yes.

Q Who was Mr. Fellman; what was his association with Inter/Continental?

A Mr. Fellman, I believe at this time, was a vice president of the company. He was also in charge of all the merchandising and advertising for the company.

Q Do you recognize the second signature on that page?

A I don't -- yes. Well, can we hold that up? This has got to be a crazy answer because of the form of the question.

Q State it.

A I recognize it, but it is not Mr. Annis', if this is what you are looking for.

MR. LILLIENSTEIN: May I see the second signature on that Xerox?

THE WITNESS: Sure.

MR. LILLIENSTEIN: Because I have not had the opportunity to read the original.

THE WITNESS: Okay.

(The document was tendered to Mr. Lillienstein.)

MR. LILLIENSTEIN: I would appreciate it if I could have a Xerox of the original. I do have several, but unfortunately they are so illegible, they are not even as good as this, and it is impossible to determine what it is, but I can see from this that at least from this you could determine whether it is or it is not.

BY MR. KOVNER:

Q Do you know the circumstances surrounding the affixation --

A Yes.

Q -- of the name Morton Annis on the second line -- on the second signature line on Exhibit B?

A It was signed by Mr. Fellman.

Q Was Mr. Fellman authorized to sign?

A Yes.

Q How --

MR. LILLIENSTEIN: I object to that, in that it calls for a conclusion.

BY MR. KOVNER:

Q Did Mr. Annis, during the period that you served as president of Inter/Continental, authorize

any of the officers of Inter/Continental to sign his name to documents?

A Yes.

Q How was that authorization granted?

A At one time, in a discussion with Mr. Annis, Mr. Fellman and I were both told that if he was out of town or out of state, that if anything came up, that we could sign his name.

Q Would that authority have to be checked with him by phone so that he was aware of what the document was?

A I don't believe so. I think that was pretty much of a blanket statement.

Q Did you witness the affixation of the name Morton Annis to that document by Leonard Fellman?

A I don't remember.

Q How do you know that it was Mr. Fellman who signed it?

A Mr. Fellman at that time informed me that he had signed it because Mr. Annis was not available.

MR. LILLIENSTEIN: Objection. I am sorry.

MR. KOVNER: Of course, I understand.

BY THE WITNESS:

A I know why, but --

Inter/Continental to sign his

uthorization granted?

n a discussion with Mr. Annis,

both told that if he was out

, that if anything came up,

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that time informed me that

e Mr. Annis was not available.

IN: Objection. I am sorry.

f course, I understand.

t --



BY MR. KOVNER:

Q Was the execution

discussed in the early par

in the employ of Inter/Con

in your presence?

A I don't remember.

with Mr. Annis, and it had

don't know if it was parti

whether Mr. Fellman had me

been discussed with Mr. An

Q Was this document

after its execution?

A Yes.

Q As you have descr

A Yes.

Q Who forwarded it

A It was forwarded

do remember.

Q Do you know if it

that forwarded it?

A I imagine it was

was brought back in.

Q Was this document

correspondence with Weitna

BY MR. KOVNER:

Q Was the execution of this document ever discussed in the early part of 1970, while you were in the employ of Inter/Continental with Mr. Annis in your presence?

A I don't remember. I know it was discussed with Mr. Annis, and it had been kicked around. I don't know if it was particularly in my presence, or whether Mr. Fellman had mentioned to me that it had been discussed with Mr. Annis.

Q Was this document forwarded to Weitnauer after its execution?

A Yes.

Q As you have described the execution?

A Yes.

Q Who forwarded it to Weitnauer?

A It was forwarded from our office, that I do remember.

Q Do you know if it was you or Mr. Fellman that forwarded it?

A I imagine it was the secretary after it was brought back in.

Q Was this document the subject of other correspondence with Weitnauer before or after its

execution?

A I am not sure I understand your question.

Q How was the request for this document by Weitnauer received by your office?

A I believe when we hit the limit of $100,000, we were requested to make another understanding with them, raising it from a hundred to one hundred and fifty.

Q Was that request in writing, to the best of your recollection?

A I would have to assume so.

Q Did Mr. Annis, after the execution of this document, ever see it while you were in the employ of the company?

A Drawing a conclusion, I would have to assume and say yes, but I wasn't there when he did it.

Q Did he come to the offices of the company while you were an employee of the company after January 14, 1970?

A Yes, I am sure he did.

Q Was he familiar with the business operations of the company in that period?

A Yes.

Q How long did you remain in the employ of the

company?

A Until approximately September of '70.

Q And from January until September, 1970, did Mr. Annis have full and complete access to all of the principal documents of the company?

A Yes. Yes.

Q In that period, did he ever object to the fact that his signature was affixed to this document?

A Not that I know of.

Q Did he ever repudiate this document to Weitnauer, to your knowledge?

A No.

MR. KOVNER: No further questions.

CROSS-EXAMINATION

BY MR. LILLIENSTEIN:

Q With respect to Exhibit B, for identification, Mr. Kassin, -- Exhibit A, for identification, the guarantee document, dated September 30, 1969, you have stated that you believe that the first signature on that document is that of yourself, and you have stated that you believe the second signature on that document is that of Morton L. Annis, is that correct?

A Yes.

396A

A Because I am sure nothing like that would get out of our hands if that hadn't been signed.

Q But do you recall that from your own direct knowledge?

A I don't know what you are leading up to. Will you go ahead? Let's see if you can --

Q Do you recall --

A Let me put it this way --

Q Do you recall that within 30 days of September 30, 1969, you were present when Mr. Annis signed this document which has been labeled Exhibit A, for identification?

A I would assume so, yes.

Q Do you recall it of your own direct knowledge?

A No, you are trying to pin me to a date, and you can't. I don't know one.

Q Is your answer "yes" or "no," do you recall it?

A I recall it being signed, but I don't recall the date when it was signed.

Q You don't recall even whether it was within a month of a date, is that correct?

MR. KOVNER: I object. I think he has

answered that question.

MR. LILLIENSTEIN: All right, if you concede that he has answered it, I won't proceed any further.

MR. KOVNER: I think that he did answer that question.

MR. LILLIENSTEIN: Okay.

BY MR. LILLIENSTEIN:

Q Now, with respect to the place of the signing, can you recall where it was signed?

A I am certain this was signed at Lake Success, at our office.

Q Can you recall the room in which it was signed?

A I guess in my office.

Q Can you recall whether it was in your office?

A No, I can't.

Q Can you recall who else was present at the time that it was signed besides yourself and Mr. Annis and Mr. Keiser? I assume Mr. Keiser was present at the time you both signed it?

A Yes, he was. I believe Mr. Radisch was present.

Q Who is Mr. Radisch?

A He was the vice president of the company.

Q What is his first name?

A Edwin L.

Q Now, you say you believe he was present. Do you recall his presence --

A No, I do not.

Q -- at the time of the signing?

A No.

Q Do you recall whether anyone else was present at the time these signatures were affixed to the document?

A No.

Q Can you recall whether you were standing or seated at the time that Mr. Annis signed the document?

A I wouldn't have the faintest idea.

Q Can you recall what his position was in the room? Was he standing or seated at the time he signed?

A I wouldn't know.

Q You wouldn't know. But you do recall seeing him sign the document?

A Yes.

Q What is it that makes that recollection vivid in your mind?

MR. KOVNER: I will object to the form of

the question.

MR. LILLIENSTEIN: Okay, I will withdraw the question.

BY MR. LILLIENSTEIN:

Q You don't recall whether you were seated or standing; you don't recall whether Mr. Annis was seated or standing; you are not certain whether it was in your room, your office, but you are certain that Mr. Annis signed the document, is that correct?

A Yes. Definitely.

Q Are you certain, or is it that you believe it to be the case?

A I have no doubts that Mr. Annis signed it.

Q Are you certain that you saw him sign it?

A Yes, I saw him sign it.

Q Okay.

A And Mr. Keiser witnessed it.

Q Did you see Mr. Keiser sign the document?

A I sure did.

Q And did he sign it in the presence of Mr. Annis?

A That's right.

Q And did he sign it in the presence of Mr. Radisch?

A That I don't remember. But he signed it in my presence, and in Mr. Annis' presence.

Q Now, with respect to Exhibit B, for identification, you have testified that you do not know whether Mr. Annis -- Strike that.

I believe you have testified that you did not know of any instance when Mr. Annis ever objected to the signing of Exhibit B, is that correct?

A That's correct.

Q Do you know of your own direct knowledge whether Mr. Annis ever was shown Exhibit B prior to the time that the claim giving rise to this action arose?

MR. KOVNER: I am going to ask you to clarify that as to time.

MR. LILLIENSTEIN: Okay.

BY MR. LILLIENSTEIN:

Q When, to your knowledge, did Mr. Annis first become aware of the signing of this document known as Exhibit B?

A I don't know when he became aware of it.

Q To your knowledge, did Mr. Annis ever see this document before this case was commenced?

A No.

401A

Q No, he did not see it?

A I don't know.

Q You have no knowledge?

A I have no knowledge whether he saw it or not.

Q All right. To your knowledge, did Mr. Annis ever deliver to you or to Mr. Fellman a signed power of attorney?

A No. He did not do it.

Q Did Mr. Annis ever give you written authorization to sign his name to a personal guarantee?

A No.

Q Have you, Mr. Kassin, ever signed Mr. Annis' name to any documents pursuant to the authorization which you described?

A I am not going to answer that. It has nothing to do with the Inter/Continental matter.

MR. KOVNER: On the record, I think we stipulated that the examination would relate to the preparation and execution of these documents, and I think --

MR. LILLIENSTEIN: Well, it seems to me that the issue is relevance. Now, I really think it is quite relevant to his testimony that both he

and Mr. Fellman were given authorization to sign Mr. Annis' name.

MR. KOVNER: Ask him if he ever signed his name to any of these documents. I think that is certainly a legitimate question within the ambit of this examination.

MR. LILLIENSTEIN: Well, you asked questions for example, regarding shipments before and after the execution.

MR. KOVNER: Just the preparation of -- as it related to the preparation of this document. We have the circumstances surrounding the preparation and the execution.

MR. LILLIENSTEIN: I would like the question to stand, and I would like the objection, if any, to be stated, and the basis of the objection to be stated.

MR. KOVNER: Well, okay, I object on the grounds that the stipulation between -- I object to this extent: I object to the extent that the question relates to any other document other than those relating to the preparation and execution of Exhibits A and B, and if the question relates to any document that relates to the preparation

and execution of these documents, I have no objection, and the reason that I object beyond that is that the examination is restricted pursuant to the agreement of the attorneys.

MR. LILLIENSTEIN: All right, I would like to state my position: I believe that whether or not the witness, in fact, ever signed the name of Mr. Annis in behalf of Mr. Annis, pursuant to an alleged authorization to do so, is quite relevant to the question of whether or not such authorization was ever, in fact, given.

For that reason, I believe that it is relevant to the question of whether or not Mr. Fellman had any such authorization, because the testimony of the witness is that such authorization applied to both Mr. Fellman and to Mr. Kassin.

MR. KOVNER: Why don't you direct your questions to any documents relating to these Exhibits, or any of the correspondence with Weitnauer, and I think --

MR. LILLIENSTEIN: I will ask those questions as well, but it would seem to me that the question that I have asked is appropriate, and I

404A

will let your objection stand.

MR. KOVNER: Will you read back the original question, please?

(WHEREUPON, the record was read by the reporter as requested.)

MR. LILLIENSTEIN: I think at this point -- you have registered an objection.

MR. KOVNER: Yes.

MR. LILLIENSTEIN: In behalf of plaintiff.

MR. KOVNER: Correct.

MR. LILLIENSTEIN: Do you have counsel here?

THE WITNESS: No, I don't.

MR. LILLIENSTEIN: Well, I am not going to advise the witness, but he may conceivably be waiving rights unless, if he has an objection, he asserts it now.

MR. KOVNER: Off the record.

(WHEREUPON, discussion was had off the record.)

MR. LILLIENSTEIN: I would like the record to show that you object to answering this question.

MR. KOVNER: Now, the question is asked and you can state your objection on the record, and Counsel will reserve --

THE WITNESS: I say I will not answer anything other than what pertains to Weitnauer Trading Company.

MR. KOVNER: All right, will you answer the question as it pertains to Weitnauer Trading Company?

THE WITNESS: If it has to do with Weitnauer, yes. Did I sign anything in the way for Weitnauer, no, I did not, if that is the question you are asking.

BY MR. LILLIENSTEIN:

Q What I am asking you is this: If it is subsequently ruled that this question is relevant and comes within the scope of this examination, will you answer the question?

A Can I ask a dumb question?

MR. KOVNER: Off the record.

(WHEREUPON, discussion was had off the record.)

MR. KOVNER: I am asserting the objection as to relevance based on the stipulation dated May 10, 1973, between counsel.

I am not directing the witness not to answer, because I concede that the question is

relevant, and in order to -- at the request of Mr. Lillienstein, I want to put that on the record so as to avoid wasting time.

As to whether the witness wants to answer the question as to matters not relating to the matters between the parties, that is a judgment he has to make, and Mr. Lillienstein will do whatever he has to, based on whatever decision the witness makes on that.

MR. LILLIENSTEIN: I would simply like to reserve the right to recall this witness pursuant to another notice to examine for the purpose of requiring him to answer this question, which is concededly relevant to the issues of this case, but where there is a dispute with regard to whether it comes within the scope of this stipulation.

MR. KOVNER: I want to make clear: My concession is that it is a relevant question within the discovery rules of the Federal Rules of Civil Procedure. I am not conceding its relevance to this case, A, --

MR. LILLIENSTEIN: Relevant within the Rules of Procedure.

MR. KOVNER: -- A, and B, you have asked

the question as to matters not relating to Weitnauer. He has answered the question as to matters relating to Weitnauer, and he has declined to answer the question as to other matters.

Now, your right to recall him presumably will be subject to your obtaining some sort of court order which may require him to answer.

MR. LILLIENSTEIN: Excuse me?

MR. KOVNER: Is that not correct?

MR. LILLIENSTEIN: No. One thing you said is not correct. I did not specifically ask questions which were unrelated to Weitnauer.

The question was: Did you ever sign Mr. Annis' name to any documents pursuant to that authorization?

MR. KOVNER: And the witness has refused to answer, as I understand the testimony, and I think there is no dispute on this, except with respect to documents relating to Weitnauer and Inter/Continental and Mr. Annis, and as to that, he has answered it.

As to other matters, he has not answered it, so I just want to make clear that whatever reservation you have would presumably depend

upon getting some court direction requiring the witness to answer.

BY MR. LILLIENSTEIN:

Q Mr. Kassin, have you ever signed Mr. Annis' name pursuant to any documents which relate to Weitnauer Trading Company, Ltd.?

A To the best of my knowledge, no.

Q You say to the best of your knowledge.

A I don't remember signing anything.

Q Is there some doubt in your mind?

A Let me rephrase it. In regard to Exhibit A and B, the answer is no.

Q The question was any documents which relate to Weitnauer Trading Company.

A There is none that I can remember.

Q Did Mr. Annis ever see this document labeled Exhibit B in your presence?

A Can you hold that up a minute?

Wasn't this question asked before and I said, "No"?

MR. KOVNER: I think that's true.

MR. LILLIENSTEIN: I don't think it is the same question.

MR. KOVNER: Off the record.

(WHEREUPON, discussion was had off the record.)

BY THE WITNESS:

A The answer is "no."

MR. KOVNER: The answer is "no" to the prior question.

BY MR. LILLIENSTEIN:

Q Were you present when Mr. Annis' signature was affixed to this document known as Exhibit B?

A I don't remember whether I was there when it was signed.

Q When you say "it was signed," you mean Mr. Annis' signature was signed; you don't remember whether you were there when Mr. Annis' signature was signed?

A No, I don't.

MR. LILLIENSTEIN: No further questions.

REDIRECT EXAMINATION

BY MR. KOVNER:

Q How do you know that it was Mr. Fellman who--

A Mr. Fellman showed me the document and told me that he had Annis' approval to sign it, and that he had signed it because Mr. Annis was somewhere else, and I don't remember where.

MR. LILLIENSTEIN: Objection.

MR. KOVNER: I would like to have this marked as Plaintiff's Exhibit C, for identification. It is a letter on the stationery of Morton L. Annis, Sr., to Mr. Meier, of Weitnauer, dated January 19, 1970, previously marked as Plaintiff's Exhibit 11, for identification, at the 1971 examination of the defendant.

(The document was tendered to Mr. Lillienstein.)

(WHEREUPON, said document was marked Plaintiff's Exhibit C, for identification, as of 5/31/73.)

MR. LILLIENSTEIN: I would like to register my objection to that document as not falling within the scope of our stipulation.

MR.KOVNER: Off the record.

(WHEREUPON, discussion was had off the record.)

BY MR. KOVNER:

Q At the time Plaintiff's Exhibit B was prepared and executed, did anyone in your office discuss the matter of the increase in the guarantee with Mr. Annis?

A Yes.

Q Have you ever seen this Plaintiff's Exhibit C, or a copy thereof?

(The document was tendered to the witness.)

BY THE WITNESS:

A It is very familiar.

BY MR. KOVNER:

Q When you say "it is familiar," did you see a copy of that letter sent to your office?

A I have the feeling that it was sent.

Q But you are not certain?

A No. There was so much correspondence, I just don't know.

Q Do you recall any phone conversation you had with Mr. Annis relating to the increase in guarantee?

A This matter of increase in the guarantee was definitely discussed with Mr. Annis. Whether by phone or in person, I don't remember. Obviously, it must have been by phone.

Q Was it discussed by you --

A Yes.

Q -- alone?

A I would assume that it was discussed in a

phone conversation between Mr. Annis and myself.

Q Do you know whether it was discussed with anybody else?

A I am certain that it also was discussed with Mr. Fellman.

Q Did Inter/Continental communicate with Weitnauer by telegram cable from time to time?

A Yes.

Q During late '69 and early 1970?

A Yes.

Q Who prepared telegrams to go from Inter/Continental to Weitnauer during January of 1970?

A It could have been any one of three or four people.

Q Did you ever prepare telegrams?

A I am sure I did.

Q Did you, of your own knowledge, know whether or not Mr. Fellman prepared telegrams?

A He definitely did. Mr. Radisch did. There were many, many telegrams that were sent back and forth on many different subjects.

MR. KOVNER: Mark this D.

MR. LILLIENSTEIN: Subject to connection.

MR. KOVNER: Subject to connection.

MR. LILLIENSTEIN: The witness has not seen it yet.

MR. KOVNER: I will mark it for identification only.

Would you mark this for identification as Plaintiff's Exhibit D, which is a copy of a cable from Interco to Weitco, in Switzerland previously marked as Plaintiff's Exhibit 13, for identification, at the examination of Morton Ann... the defendant, in 1971.

(WHEREUPON, said document was marked Plaintiff's Exhibit D, for identification, as of 5/31/73.)

(The document was tendered to the witness.)

BY MR. KOVNER:

Q Have you ever seen Plaintiff's Exhibit D before?

A I do not remember seeing it, per se.

Q When you sent telegrams from Inter/Continental, did you sign it Interco?

A We had our own -- what do you call it -- we had our own cable thing right in the office. Interco was our code name.

Q Do you remember receiving a letter from Weitnauer requesting an -- early in January -- requesting an increase of the guarantee to $150,000?

A There was a request made. Whether it was by letter or verbally, I don't remember, but this obviously is the reason for the January 14th document.

MR. LILLIENSTEIN: You are now referring to Exhibit D?

THE WITNESS: Right.

BY MR. KOVNER:

Q Do you recall whether or not you sent this telegram?

A No, I do not.

MR. KOVNER: Mark this as Exhibit E.

(The document was tendered to Mr. Lillienstein.)

MR. LILLIENSTEIN: Had this been marked previously?

MR. KOVNER: No, it has been marked 10 below.

MR. LILLIENSTEIN: But this has been marked previously?

MR. KOVNER: It has been marked at the last examination.

MR. LILLIENSTEIN: Okay.

MR. KOVNER: I would like to mark for identification as Plaintiff's Exhibit E, a letter addressed to Mr. Kassin, dated February 5, 1970, previously marked as Plaintiff's Exhibit 10 at the 1971 examination of the defendant.

(WHEREUPON, said document was marked Plaintiff's Exhibit E, for identification, as of 5/31/73.)

BY MR. KOVNER:

Q Have you ever seen that before?

(The document was tendered to the witness.)

BY THE WITNESS:

A It is familiar.

BY MR. KOVNER:

Q Does it refresh your recollection as to whether or not you forwarded the Exhibit B to Weitzner?

A I think we asked that question before, and I said in all probability someone in the office forwarded it. I doubt if I did it personally.

MR. KOVNER: Off the record.

(WHEREUPON, discussion was had off the record.)

MR. KOVNER: I have no other questions.

RECROSS-EXAMINATION

BY MR. LILLIENSTEIN:

Q With respect to the alleged authorization by Mr. Annis to you and to Mr. Fellman, can you be more precise as to the time and place when such authorization was given?

A No. There were several meetings, and I can't give you the time and the place and the day and the hour, and whether I was standing or sitting but we were told that if something came up and Mr. [illegible] was not around, that it was okay to sign his name.

Q You were told that by Mr. Annis?

A Yes.

Q Now, when Mr. Annis said if something came up you could sign his name, was that the extent of the authorization, or was he more specific than that?

A I would say it was basically that.

Q It was basically that?

A Yes.

Q Did you interpret that to mean that either you or Mr. Fellman was authorized to sign personal guarantees on behalf of Mr. Annis?

A I didn't interpret it any way, because I didn't sign the personal guarantee.

Q Did Mr. Annis ever tell you specifically that you were authorized to sign his name to any documents which would expose him to personal liability.

A No.

Q He never gave you that specific authorization. To your knowledge, did he ever give that specific authorization to Mr. Fellman?

A I wouldn't have the faintest idea.

Q To your knowledge, then, the answer is "No"?

A Whether he gave it to Mr. Fellman?

MR. KOVNER: I object. Let the witness answer the question. He said he didn't know whether that specific authority had been given to Fellman. He testified as to the broad authority.

MR. LILLIENSTEIN: Would you repeat my question, because I want to be sure that it is clear?

(WHEREUPON, the record was read by the reporter as requested.)

THE WITNESS: Would you repeat that? I am confused as to that question. Would you restate that question so that I -- number one, reread the question. There is something in there that I don't understand.

(WHEREUPON, the record was read by the reporter as requested.)

THE WITNESS: Can we keep this off the record a minute?

MR. KOVNER: Yes.

MR. LILLIENSTEIN: I would prefer not to keep it off the record. It is too critical.

MR. KOVNER: Okay, give your answer and explain it. If you didn't answer it fully, answer it fully now.

BY THE WITNESS:

A When we were told that we could sign his name, there was no [illegible] as to what we could do or what we couldn't do.

Now, I don't know if that answers the question, but that has got to be my answer.

BY MR. LILLIENSTEIN:

Q Now, I would like to repeat the question with respect to Mr. Fellman. Do you know of your own knowledge that Mr. Fellman was ever given specific authorization to sign Mr. Annis' name to a document which would expose Mr. Annis to personal liability?

A Didn't I answer that "no"?

Q You didn't answer it yet. That's when we

got into the dialogue.

A Okay. I know that Mr. Fellman was at these meetings where we got the blanket statement. What Mr. Annis did with Mr. Fellman in the way of giving him authorization, I wouldn't know; I wasn't there.

MR. LILLIENSTEIN: I would appreciate a "yes" or "no" answer to the question. I think it is susceptible to a "yes" or "no" answer.

MR. KOVNER: Well, Max, in fairness, it really isn't.

THE WITNESS: It really isn't. You are asking like three questions.

MR. KOVNER: He said he got blanket authority, and then you asked, "Did you get this specific authority," and if the answer is "no," it sort of suggests an infringement on the blanket authority, which he never testified to.

BY MR. LILLIENSTEIN:

Q Were you ever present at any time when Mr. Annis gave Mr. Fellman authority to sign Mr. Annis' name to documents which might expose Mr. Annis to personal liability?

A Specifically, no. Generally, yes.

Now --

Q All right.

MR. KOVNER: In other words, you were present when Mr. Fellman received broad, general authority--

THE WITNESS: Right.

MR. KOVNER: -- to sign?

THE WITNESS: Right.

MR. KOVNER: Without any specific limitations?

THE WITNESS: Right.

MR. KOVNER: And you do not know whether or not Mr. Annis subsequently limited that broad authority --

THE WITNESS: That's right.

MR. KOVNER: -- as to Mr. Fellman?

THE WITNESS: I think I have answered this -- I have answered this "yes" four different times, unless I am crazy.

MR. LILLIENSTEIN: Mr. Reporter, in the spirit of comradery, in view of the fact that we have to share a cab back, I will have to register a very, very strenuous objection to Counsel putting words into the witness' mouth and answering the question for him.

MR. KOVNER: That is most inappropriate.

THE WITNESS: Very inappropriate.

MR. LILLIENSTEIN: No further questions.

MR. KOVNER: Thank you very much, Mr. Kassin.

(FURTHER DEPONENT SAITH NOT.)

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| WEITNAUER TRADING COMPANY, LTD., Plaintiff, | ) | |
| vs. | ) | No. 71 Civ. 782 |
| MORTON L. ANNIS, Defendant. | ) | |

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of Pages 1 to 46, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, as it now appears.

Deponent.

SUBSCRIBED AND SWORN TO
before me this 13th day
of August, A.D. 1973.

Notary Public

STATE OF ILLINOIS )
) SS.
COUNTY OF C O O K )

I, SEYMOUR L. WOLFE, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify that heretofore, to-wit, on the 31st day of May, A.D. 1972, personally appeared before me at Suite 4400, One IBM Plaza, in the City of Chicago, County of Cook and State of Illinois, RONALD A. KASSIN, a witness produced on behalf of the plaintiff in a certain cause now pending and undetermined in the United States District Court for the Southern District of New York, wherein WEITNAUER TRADING COMPANY, LTD., is plaintiss and MORTON L. ANNIS is defendant.

I further certify that the said RONALD A. KASSIN was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by said witness was reported stenographically by me, in the presence of the said witness, and afterwards reduced to typewriting, and the foregoing is a true and correct transcript of the testimony so given by said witness as aforesaid.

424A

I further certify that there were present at the taking of this deposition MR. VICTOR A. KOVNER on behalf of the plaintiff, and MR. MAXWELL J. LILLIENSTEIN on behalf of the defendant.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 12th day of June, A.D. 1973.

Seymour L Wolfe

Notary Public, Cook County, Illinois.

My commission expires August 27, 1974.

FENDANT'S EXHIBITS A **425A**

| Interco-Nr. | Best. Datum | Lieferant | Faktura des Lieferanten | Faktura WTC | code IF/IA 10%/8% | 6% resp. 4% | 4% | |
|---|---|---|---|---|---|---|---|---|
| 1 - | 4.8.69 | B & N | 191.61 | 202.71 | 11.10 | 6.66 | 4.44 | |
| 2 P 1018 | 2.10.69 | B & N | 18'140.88 | 20'368.90 | 2'228.02 | 1'336.80 | 891.22 | 5444.- 16924.90 |
| 3 P 1008 | 8.9.69 | Calvet | 4'537.50 | 4'990.90 | 453.40 | 272.- | 181.40 | 3476.40 1494.50 |
| 4 P 1011 | 3.10.69 | Sarclet | 2'275.- | 2'502.50 | 227.50 | 136.50 | 91.- | |
| 6 P 1014 | 3.10.69 | Fougeres | 4'892.- | 5'380.90 | 488.90 | 293.34 | 195.56 | |
| 7 P 1015 | 3.10.69 | Fougeres | 4'892.- | 5'380.90 | 488.90 | 293.34 | 195.56 | |
| 8 - | 15.10.69 | Fougeres | 18.30 | 20.15 | 1.85 | 1.85 | - | |
| 9 P 1001 | 4.10.69 | Curtis | 8'473.50 | 9'317.50 | 844.- | 506.40 | 337.60 | |
| 10 - | 17.10.69 | Fougeres | 71.16 | 78.30 | 7.14 | 4.29 | 2.85 | |
| 12 P 1002 | 2.10.69 | Osborne | 1'674.- | 1'860.- | 186.- | 111.60 | 74.40 | |
| 13 P 1003 | 2.10.69 | Osborne | 1674.- | 1'860.- | 186.- | 111.60 | 74.40 | |
| 14 P 1004 | 30.9.69 | Wilson | 2'890.- | 3'180.- | 290.- | 174.- | 116.- | |
| 15 P 1006 | 2.10.69 | Hamot | 4'776.- | 5'253.60 | 477.60 | 286.55 | 191.05 | |
| 16 P 1007 | 2.10.69 | Hamot | 9'738.- | 10'711.80 | 973.80 | 584.28 | 389.52 | |
| 17 P 1009 | 3.10.69 | Calvet | 4'537.50 | 4'990.40 | 452.90 | 272.95 | 181.95 | |
| 18 P 1010 | 15.10.69 | Sarclet | 1'625.- | 1'787.50 | 162.50 | 97.50 | 65.- | |
| 19 P 1012 | 3.10.69 | Navarro | 8'000.- | 8'605.50 | 605.50 | 363.30 | 242.20 | |
| 20 P 1013 | 3.10.69 | Navarro | 8'000.- | 8'605.50 | 605.50 | 363.30 | 242.20 | |
| 21 P 1016 | 3.10.69 | Hoar | 9'365.- | 10'301.50 | 936.50 | 561.90 | 374.60 | |
| 22 P 1017 | 3.10.69 | Hoar | 9'924.50 | 10'919.95 | 992.45 | 595.47 | 396.98 | |
| | | | 105'645.95 | 116'375.51 | 10'621.56 | 6'373.63 | 4'247.93 | |

| Nummer | Interco-Nr. | Best. Datum | Lieferant | Faktura des Lieferanten | Faktura WTC | Code IP/IA | 6% resp 4% | 4% |
|---|---|---|---|---|---|---|---|---|
| | Negerhag | | | 105 693.95 | 116 315.51 | 10 621.56 | 6 373.68 | 4 247.93 |
| 23 | P 1018 | 3.10.69 | B & N | 18 724.08 | 20 180.40 | 1 456.32 | 873.80 | 582.52 |
| 24 | P - | 30.9.69 | Wilson | 72.96 | 75.78 | 2.82 | 2.82 | - |
| 25 | P 1029 | 31.10.69 | Sarclet | 1 072.50 | 1 158.- | 85.50 | 42.75 | 42.75 |
| 26 | P 1030 | 31.10.69 | Sarclet | 1 950.- | 2 106.- | 156.- | 78.- | 78.- |
| 27 | P - | 5.11.69 | B & N | 37.11 | 37.32 | -.21 | -.21 | |
| 28 | - | 26.11.69 | Navarro | 64.17 | 224.17 | 160.- | 96.- | 64.- |
| 5 | P 1005 | 3.10.69 | Wilson | 2 890.- | 3 180.- | 290.- | 174.- | 116.- |
| | | | | | | 12 772.41 | | |
| 29 | P 1041 | 7.1.70 | Herkheimer | 9 180.- | 10 098.- | 918.- | 550.80 | 367.20 |
| 30 | P 1043 | 7.1.70 | Osborne | 2 232.- | 2 412.- | 180.- | 90.- | 90.- |
| 31 | P 1047 | 8.1.70 | Curtis (Hand) | 1 341.50 | 1 451.25 | 109.75 | 54.88 | 54.87 |
| 32 | P 1049 | 14.1.70 | Handapier | 2 550.- | 2 805.- | 255.- | 153.- | 102.- |
| 33 | P 1050 | 14.1.70 | Hiscus | 2 137.96 | 2 383.96 | 246.- | 147.60 | 98.40 |
| 34 | P 1044 | cancelled | Cachet | | | | | |
| 35 | P 1056 | cancelled | Fougeres | | | | | |
| 36 | P 1057 | 14.1.70 | Fougeres | 852.50 | 920.50 | 68.- | 34.- | 34.- |
| 37 | P 1062 | 10.2.70 | Osborne | 1395.- | 1507.50 | 112.50 | 56.25 | 56.25 |
| 38 | P 1063 | cancelled | Osborne | | | | | |
| 39 | P 1064 | cancelled | Navarro | | | | | |
| 40 | P 1065 | cancelled | Navarro | | | | | |
| 41 | P - | 26.2.70 | Curtis | 2273.50 | 2501.- | 227.50 | 136.55 | 90.95 |
| | | | | 133 457.20 | 147 356.39 | 14 [illegible] | 8 514.29 | 5 [illegible] |

| ...mer | Interco Nr. | Best. Datum | Lieferant | Fakturabetrag des Lieferanten | Faktura WTC | Code | 6% / 4% | 10% | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | 152'437.23 | 167'225.39 | 14 867.13 | 8864.29 | 6024.57 | |
| 42 | P - | 26.2.70 | Curtis | £ 1116.- ✓ | $ 1227.50 ✓ | $ 111.50 | 66.91 | 44.59 | |
| 43 | P 1069 | cancelled | Sarded & D. | | | | | | |
| 44 | P 100 | cancelled | Fougères | | | | | | |
| 45 | P 132 | 12.5.70 | Wilson's | $ 3600 | $ 3960.- ✓ | $ 360.- | 216.- | 144.- | |
| 46 | P 133 | 12.5.70 | Wilson's | $ 2400.- | $ 2640.- ✓ | $ 240.- | 144.- | 96.- | |
| | | | | 159583.23 ✓ | 175183.89 | 15'600.66 ✓ | 9291.20 ✓ | 6309.46 ✓ | |
| | | | | £'s Einstand | Inv. Value | £'s C | | | |
| | | | | 159'583.23 | 175'183.89 | 15'600.66 | | | |
| | | | | ✓ | ✓ | ✓ | | | |

...ification.

...klärung:

s 3.10.69 — 10% auf alle Artikel (6% m.a + 4% i/c)
äter — 8% auf Wein on wine (4% m.a.+ 4% i/c)
after — 10% auf den Rest (6% m.a.+ 4% i/c)
for Rest

| Nummer | Interco Nr. | Best. Datum | Lieferant | Fakturabetrag des Lieferanten | Faktura WTC | Code | 6% / 4% | 4% |
|---|---|---|---|---|---|---|---|---|
| | | | | 152'457.23 | 15'225.29 | 14 864.15 | 8864.29 | 6024.87 |
| 42 | P - | 26.2.70 | Curtis | $ 1116.- ✓ | $ 1227.50 ✓ | $ 111 50 | 66.91 | 44.59 |
| 43 | P 1069 | cancelled | Sarded & D. | | | | | |
| 44 | P 100 | cancelled | Feugères | | | | | |
| 45 | P 132 | 12.5.70 | Wilson's | $ 3600 | $ 3960.- ✓ | $ 360.- | 216.- | 144.- |
| 46 | P 133 | 12.5.70 | Wilson's | $ 2400.- | $ 2640.- ✓ | $ 240.- | 144.- | 96.- |
| | | | | 159553.23 ✓ | 175183.89 | 15600.66 ✓ | 9291.20 ✓ | 6309.46 ✓ |
| | | | | No Error ✓ | No Error | 1% C | | |
| | | | | 159 583.23 | 175'183.89 | 15 600.66 | | |
| | | | | ✓ | ✓ | ✓ | | |

Classification.

Erklärung:

| | | |
|---|---|---|
| bis 3.10.69 | 10% auf alle Artikel | (6% m.a + 4% i/c) |
| später | 8% auf Wein | (4% m.a.+ 4% i/c) |
| | 10% auf den Rest | (6% m.a.+ 4% i/c) |

DEFENDANT EXHIBIT B

B

ID

429A

WIKLER GOTTLIEB TAYLOR & HOWARD
64 WALL STREET
NEW YORK, NEW YORK 10005

212 HANOVER 2-1080
CABLE: WIGOLOST, NEW YORK

October 1, 1969

BRIAN S COMERFORD
COUNSEL
MILTON D STEWART
SAUL C CORWIN

Mr. Henry Thomann
Weitnauer Trading Company Limited
4001 Basel
Switzerland

Re: Intercontinental Wine & Spirts Ltd.
Our File #1794

Dear Mr. Thomann:

On September 30, 1969, we cabled you as follows:

"GUARANTY AGREEMENT SIGNED AS PREPARED. FOLLOWS BY MAIL."

We are now enclosing the said Guaranty Agreement. You will note that it is signed by Messrs. Annis and Kassin and that the third line is left blank. Mr. Kassin explained to me that he wanted the agreement out as soon as possible and was satisfied, if you are, with having just the two of them guarantee payment.

Very truly yours,

Harry A. Gottlieb

HAG:bcc
enc.

AIR MAIL

DEFENDANT EXHIBIT C [illegible] R CABLE NAME IS WIGOLOST

C

# al Telegram

ate unless otherwise marked). This telegram will be transmitted electronically by cable, radio, or satellite
CTLIEB TAYLOR & HOWARD Account Number 93-989

ID

ules, and regulations as set forth in the applicable tariff of RCA Communications, Inc. on file with the F.C.C.

To

Via RCA
Insert "RCA"

Our file
1774

HENRY THOMANN
WEITCO
BASLE, SWITZERLAND

GUARANTY AGREEMENT SIGNED AS PREPARED. FOLLOWS BY MAIL.

9/22/69

GOTTLIEB

#2,92

(C.2

DEFENDANT EXHIBIT D

D

431A

4 C

ID

QB

Jan 13

Pltf Dep Ex D, for ID
6/1/73 S.W

Jan 8

81380
. lake success ny sdz0108 42/41 12 1120a est dc5

weitco basel switzerland

re your let of jan six are preapred to increase guarantee to 150,000 dollars please approve necessary re orders and advise what formal papers you wish drawn up and signed arrangements being made for strip stamps regards
interco

col 150,000

Pl's. Ex. 13 for Ident
6/11/71
Feb

(2053)

62194a wtc ch
to bern 318 t

62194a wtc ch
tg bern 318 t

**432A** DEFENDANT EXHIBIT D,D-1

Ex. D-I

1

81380

) lake success ny sdz0108 42/41 12 1120a est dc5

weitco basel switzerland

re your let of jan six are preapred to increase guarantee to 150,000 dollars please approve necessary re orders and advise what formal papers you wish drawn up and signed/arrangements being made for strip stamps regards
interco

) col 150,000

Pl's. Ex. 13 for Iden
6/11/71
Taeb

(2053)

62194a wtc ch
tg bern 318 t

DEFENDANT EXHIBIT E

E

RB

433A

Mr. Ronald A. Kassin
Inter/Continental
Wine and Spirits Ltd.
3000 Marcus Avenue
Lake Success /N.Y.
U.S.A.

PURCH ME/wk

January 6, 1970

Dear Mr. Kassin,

We have been very pleased to see that you have been able to place re-orders for various products Osborne, Marmot, Regency Sherry and so on, which is a healthy sign of the development of your company and we know that you are working hard to come to volume business. We have also seen your correspondence with Blankenheym & Nolet's and we have, on the occasion of a personal meeting, told this company that they have to be on the go for new attractive items for you. Your recent letter regarding the Spanish Wines has our immediate attention and we hope to be able to revert within soon. We are also looking in Yugoslavia for some convenient Wines because we find the quality of these Wines excellent and the prices very attractive. You will hear from us soon.

We have, however, a problem and this is the fact that the limit of $1[illegible]1'000.-- is practically again completely committed and we have even difficulties to confirm to the various suppliers some of the recent orders. We thank you for your remittance of $ 4'100.-- which we have, of course, immediately credited to you. Our question is now, whether you can make other funds or guarantees available, so that we can without interruption confirm the orders to the suppliers. With the pending orders an amount of approx. $ 15'000.-- needs to be finally confirmed.

We are looking forward to your early reply and remain,

Yours very truly,

WEITNAUER TRADING COMPANY LTD

e.r.

PS: In order to complete your order P 1041, including also 100 cartons Duchalot Ats. free

DEFENDANTS EXHIBITS F 434A

DOMESTIC SERVICE
Check the class of service desired; otherwise this message will be sent as a fast telegram
TELEGRAM
DAY LETTER
NIGHT LETTER

# WESTERN UNION TELEGRAM

W. P. MARSHALL, CHAIRMAN OF THE BOARD
R. W. McFALL, PRESIDENT

INTERNATIONAL SERVICE
Check the class of service desired; otherwise the message will be sent at the full rate
FULL RATE
LETTER TELEGRAM
SHORE SHIP

| NO. WDS. | CL. OF SVC. | PD. OR COLL. | CASH NO. | CHARGE TO THE ACCOUNT OF | TIME FILED |
|---|---|---|---|---|---|
| | | | | | 11:25 am |

...ceive the following message, subject to the terms on back hereof, which are hereby agreed to

May 19, 1969

EX F

Weltco
4001 Basel, Switzerland

Convertible preferred will be issued at $3.50 per share. Consequently, your $30,000 convertible bonds can be exchanged into common shares at this inside price. Please confirm to Kassin. Regards.

Morton Annis

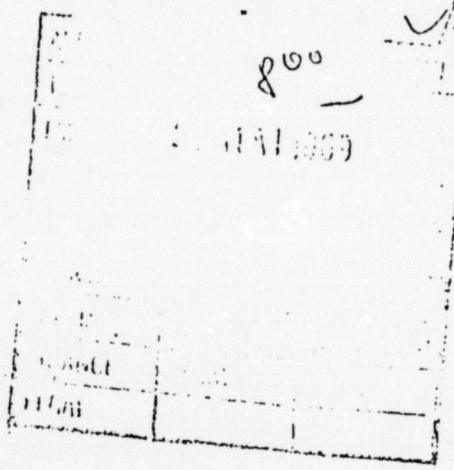
WU 1209 (1-62) (3)

DEFENDANTS EXHIBIT G

Ex. 6

435A

62194a wtc ch
tg bern 318 n



82290
tampa flo sdz0120 34 19 153p est sf

weitco basel

convertible preferred will be issued at dollars 3.50 per share
consequently your thirty thousand convertible bonds can
be exchanged into common shares at this inside price please confirm
to kassin regards
annis

col3.50

(2237)

62194a wtc ch
tg bern 318 nb

DEFENDANT EXHIBIT H

T+

MSC 67

SS



ED

tg aufg basel a
621947 wtc ch

basel telex 6219434 20/5/69

morton annis pobox 1 tampa/florida/usa

yours 19th please advise if you agree with convertible bonds of fourty thousand dollars instead thirty thousand as kassin expects credit attest of fourtythousand regards
weitco

col pobox 1 19th

(1530)

621947 wtc ch
tg aufg basel a

DEFENDANT

437A

I

I-D

# ESTERN UNION TELEGRAM

RSHALL THE BOARD

R. W. McFALL PRESIDENT

INTERNATIONAL SERVICE
Check the class of service desired otherwise the message will be sent at the full rate
FULL RATE
LETTER TELEGRAM
SHORE SHIP

CASH NO. | CHARGE TO THE ACCOUNT OF | TIME FILED

k hereof, which are hereby agreed to

9:10 am

May 19, 1969

Mr. Kassin cables wants attesting U.S. dollars $40,000 line of credit. Cannot confirm unless having your confirmation re U.S. dollars $30,000 convertible bonds exchangeable into common shares. Please advise.

Weitco

WU1206(R2-65)

EXHIBIT J

J

438A

TMT

62194a wtc ch
tg bern 318 q

81441
tampa flo sdz0597 22 21 1119a est do

weitco basel

fortythousand dollars of convertible bonds available
intercontinental meeting in ny monday will write you in detail
that date regards
annis

To am INTERCONT 22/5/64
+ Brief do. 22/5/64
wills abgesprochen mit TM.

(2009)

62194a wtc ch
tg bern 318 qo

DEFENDANT

DEFENDANT EXHIBIT K

439A

ORDWAY HILTON
EXAMINER OF QUESTIONED DOCUMENTS
15 PARK ROW
NEW YORK, NEW YORK 10038

(212) BArclay 7-7095

Laboratory
8 North Star Drive
Morristown, New Jersey 07960
(201) 539-3028

American Academy of
Forensic Sciences

American Society of
Questioned Document Examiners

Elbridge W. Stein, 1877-1970.

October 5, 1973

REPORT OF AN EXAMINATION
OF THREE DENIED SIGNATURES
Morton L. Annis

I have made a careful examination of the signatures on the following three documents each of which has been purported to have been signed by Morton L. Annis, Sr.:

1. A three page typewritten guaranty dated September 30, 1969 which bears a signature Ronald Kassin, Morton L. Annis, Sr. and a witness signature Howard Keiser. This document is typewritten on the letterhead of Inter/Continental Wine and Spirits Ltd. and is addressed to Weitnauer Trading Co., Ltd. of Basel, Switzerland.

2. A typewritten letter of January 14, 1970 bearing signatures Ronald Kassin, Morton Annis and Leonard Fellman. This letter is typewritten on the letterhead of Inter/Continental Wine and Spirits Ltd. and is addressed to Weitnauer Trading Co., Ltd. of Basel, Switzerland.

3. A typewritten letter dated January 19, 1970 which apparently is signed Morton. This letter is prepared on the letterhead of Morton L. Annis, Sr. Tampa, Florida and is addressed to Mr. F. Meier, Weitnauer Trading Co., Ltd., Basel, Switzerland.

PROBLEM

The purpose of this examination was to determine whether or not Morton L. Annis, Sr. whose known signatures were available for study and comparison signed any or all of the above documents.

STANDARDS

The following documents were submitted for study and comparison and are reported to contain the authentic signatures of Morton L. Annis, Sr. The following documents appear to contain his full signature:

1. Photocopy of an affidavit filed in the action of Weitnauer Trading Co., Ltd. against Morton L. Annis which signature was sworn to before a notary public on December 10, 1971.

2. A typewritten letter on the letterhead of Morton L. Annis to Harry A. Gottlieb which bears a signature of Annis dated January 18, 1971, and a second to H. Thomann.

3. A two page typewritten letter on the letterhead of Morton L. Annis, Sr. addressed to H. Thomann which bears a signature Morton L. Annis dated July 30, 1970.

4. A one page typewritten letter on the letterhead of Morton L. Annis, Sr. to F. Meier signed Morton L. Annis dated September 22, 1969.

5. A letter on the letterhead of Morton L. Annis, Sr. to F. Meier bearing Annis' signature and dated June 16, 1969.

6. A two page memorandum between Morton L. Annis and Weitnauer Trading Co., Ltd. which bears a signature Morton Annis, and is dated October 16, 1968.

The following documents bear signature of Morton L. Annis, Sr. which apparently are signed simply Morton:

7. A letter of February 19, 1971 to H. Thomann.

8. A letter of January 19, 1971 to Adolphe P. Weitnauer.

9. A letter of December 16, 1970 to Adolphe P. Weitnauer.

10. A letter of October 13, 1970 to H. Thomann.

11. A letter of June 19, 1970 to Adolphe P. Weitnauer signed as Division President, Gradiaz Annis.

12. A letter of February 25, 1970 to H. Thomann.

13. A letter of August 20, 1969 to H. Thomann signed as Division President, Gradiaz Annis.

14. A letter of July 10, 1969 to Adolf Weitnauer signed as Division President, Gradiaz Annis.

15. A letter of June 9, 1969 to F. Meier.

16. A letter of April 7, 1969 to F. Meier.

17. A letter of November 16, 1970 to H. Thomann.

18. A letter of October 25, 1968 to F. Meier.

OPINION and REASONS

From a careful examination of the signature Morton L. Annis on the guaranty of September 30, 1969, and a comparison of this signature with the various known signatures of Morton L. Annis, Sr., it is my opinion that Annis signed this document.

From a careful examination of the signature M. Annis on the letter of January 14, 1970, and a comparison of this signature with the various known signatures of Morton Annis, it is my opinion that Morton L. Annis, Dr. did not sign this letter.

From a careful examination of the signature Morton which appears on the letter of January 19, 1970, and a comparison of this signature with the known signatures of Morton L. Annis, and particularly those with his short form of signature, it is my opinion that Annis signed this document.

The various known signatures of Morton L. Annis reveal a distinctive and individualized form of signature. Actually the signature is virtually illegible because it has been so thoroughly individualized. However, when one knows what Annis' name is some reasonably accurate estimate of the intended signature can be made. Many of the documents available for study contain a very short form of signature and the combination of strokes in this short signature can best be interpreted as representing a stylized and abbreviated writing of the name Morton, although Annis might describe this signature as intending to contain other letters such as his initial. The longer signatures can generally be made out to contain some portion that corresponds to this short signature, together with a form that can be interpreted as an "L", and a second form that can be interpreted as an "A". Following the second form there is generally a wavering finishing line which can be recognized as having been derived from the lower case letters that make up the name Annis. In some instances an "i" dot is added but this occurs in only two examples. At times the middle initial "L" appears to have been omitted. There is in Annis' signature certain

basic strokes that seem to occur in most instances but the details of these are highly variable. It is only when a number of signatures are gathered together as they have been in this case can one begin to account for the strokes and the movements that make up Annis' signature.

The denied signature on the guaranty apparently was written with a ball point pen that was somewhat defective. It starts to write poorly suggesting that its ink supply is nearly exhausted. However, a complete signature was made consisting of strokes comparable to the short signatures that have been interpreted as Morton, a middle initial "L", and a somewhat degenerate form of the capital "A" followed by the horizontal wavering ending strokes. All of these movements can be accounted for,while not identically the same form, their similar movements are found among the genuine signatures. This basic signature has been written with freedom and a sure moving pen in a typical manner of Annis' signature writing. There is nothing about the signature as originally written that suggests forgery or imitation. However, at some point or time some one has added a second beginning stroke. It is deeper in color but consistent with the color that the pen deposited as it completed the signature. There is no attempt to superimpose or to join this additional stroke to the beginning of the signature and it travels over a portion of the path of the initial upstroke and downstroke. One would interpret this as typical of an intensifying addition made to a weak signature by the writer himself. This kind of an addition is completely out of character with the patching of a forgery. While it does give the signature a difference outward appearance and a patched appearance it is the writer's opinion that this addition could well have been made by the signor himself upon the completion of his signature. In all the signature on this document contains writing habits found in Morton L. Annis' signatures, and no evidence that clearly points away from genuineness. Consequently, it is my opinion that Morton L. Annis signed this document.

The signature to the January 14, 1970 letter which has been denied is so different from Morton Annis' usual signature writing that it is my opinion that Annis did not execute this particular signature.

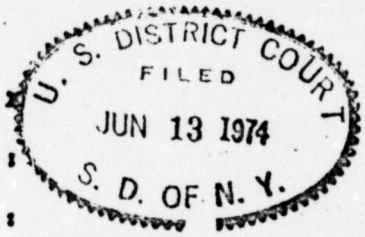
The short signature on the January 19, 1970 letter which Annis has denied contains writing habits that are repeated among other of Annis' short signature forms. It is written freely, rapidly and with the normal emphasis and release of pressure that characterizes his writing. Everything about the signature points to genuineness and, consequently, it is my opinion that Annis signed this letter.

Respectfully submitted,

Ordway Hilton
OH:CR

Report to:
Mr. John C. Lankenau
Lankenau, Kovner, Bickford & Abrons
30 Rockefeller Plaza
New York, N. Y. 10020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK




WEITNAUER TRADING COMPANY, LTD.,

Plaintiff,

- against -

71 Civ. 782-

MORTON L. ANNIS,

Defendant.

#40812

A P P E A R A N C E S:

Messrs. Wikler Gottlieb Taylor & Howard
40 Wall Street
New York, New York 10005
Attornoys for Plaintiff

Trial Counsel
Lankenau Kovner Bickford & Abrons, Esqs.
30 Rockefeller Plaza
New York, New York
by: Victor A. Kovner, Esq.

Messrs. Newman, Rich, Krinsly, Poses
& Katz
99 Park Avenue
New York, New York 10016
Attorneys for Defendant

CARTER, District Judge

OPINION

The issues in this case do not appear to be unduly complex. Defendant, as officer and director of the General Cigar Co., had dealings with plaintiff, a Swiss corporation engaged in the wholesale and retail distribution of wines and liquors, as well as a variety of other items not pertinent to this controversy. In May and July, 1960, defendant met in Basel, Switzerland with plaintiff's representative. Defendant was interested in the organization of a United States wine and liquor import facility. On October 16, 1960, at a third meeting of the parties on the subject, an agreement was reached and signed. The agreement provided that plaintiff was to purchase liquors and wines in Europe, and defendant was to have charge of the sale and distribution of those products in the United States, with each party to share equally in the profits.

Most of the dealings between plaintiff and defendant were conducted on plaintiff's behalf by one of its Assistant Vice Presidents, Fritz Meier. For about six months after the agreement was signed, nothing concretized to put the agreement into effective operation. Defendant was engaged in attempting to set up the American import company but with no apparent success. Then on

April 9, 1969, defendant advised Meier by letter that a corporation, Intercontinental Wine and Spirits Co. (Intercontinental), had been organized, and that he and the corporation's President Ronald Kassin and Sales Manager Ed Radach were arriving in Basel on the afternoon of April 24 to discuss with Meier "our liquor situation." A prospectus of Intercontinental was attached to this communication.

On April 24, 1969, the meeting was held as scheduled. At that meeting it was agreed that plaintiff would advance to Intercontinental a credit of $40,000 in exchange for which Intercontinental on going public was to issue to the plaintiff convertible bonds, which action Intercontinental appeared prepared to take in the near future. The following procedure was agreed upon: plaintiff, acting as purchasing agent for Intercontinental, would contact suppliers, recommend products and labeling; and after arrangements on prices of the products had been agreed upon between Intercontinental and the suppliers, Intercontinental would order directly from the suppliers. Plaintiff assumed liability for the order by confirming it with the supplier. Plaintiff would pay the invoices when due, and bill Intercontinental, adding a 10% mark up. Of this additional amount, 4% was to be credited to Intercontinental's account

and held by plaintiff to be applied to expenses incurred in Europe on Intercontinental's behalf; the remaining 60, after certain deductions, was to be divided equally between plaintiff and defendant pursuant to a private agreement between the parties, which defendant requested plaintiff not reveal to defendant's partners in Intercontinental.

By the late summer of 1969, Intercontinental's orders had reached $100,000, and plaintiff refused to act as purchasing agent for Intercontinental without securing a personal guarantee from defendant committing him personally to liability up to $100,000. In September, 1969, Meier spoke to defendant by telephone demanding his personal guarantee on orders confirmed by plaintiff, and Meier travelled to New York for the purpose of securing such a guarantee. Plaintiff's New York counsel prepared the necessary form, and Meier presented it to defendant at a dinner meeting at the "21" Club on September 24 or 25. Defendant did not sign the guarantee at that time but kept a copy of it indicating to Meier he wanted to have his lawyer study and review it before deciding whether to sign it.

Meier returned to Basel without defendant's signature on the proposed guarantee. On October 1, 1969,

Intercontinental advised plaintiff by telegram that an unsigned copy of the guarantee was being mailed and that a signed copy was being delivered to plaintiff's New York counsel. This was followed by a telegram from defendant, Annis, dated October 6, stating that the guarantee had been signed and presented to plaintiff's lawyer the preceding week. On or about October 6, plaintiff received the executed guarantee. It had been retyped on Intercontinental's stationery, is dated September 30, 1969, and contains the signature of Kassin and a signature purporting to be defendant's, both witnessed by a Henry Kaiser.

At trial, plaintiff produced a handwriting expert who testified that in his opinion the signature on the September 30 document is defendant's. Defendant, at trial, did not controvert the testimony as to the genuiness of his signature on the September 30 document; he merely testified that he did not remember signing the document in question.

The September 30 agreement commits the signatories to pay "all amounts up to ... $100,000 ... with interest, and without deduction for any claim or set off or counterclaim of Intercontinental the full amount of all obligations or indebtednesses due [the plaintiff] from Intercontinental, together with all expenses of

collection and reasonable counsel fees incurred by [plaintiff] by reason of the default of Intercontinental."

After receiving the September 30 document, plaintiff resumed functioning as Intercontinental's purchasing agent. Soon, however, Intercontinental's orders were in excess of the $100,000 guarantee. Plaintiff advised Kassin that it would be prepared to advance another $30,000 on receipt of a guarantee signed by defendant similar to the September 30 document. At a meeting in Basel, Switzerland on November 20, 1969, defendant agreed to increase this guarantee to $150,000 on condition that in addition to Kassin, a Leonard Fellman also be a co-guarantor.

On January 13, 1970, plaintiff advised defendant by letter that Intercontinental had placed orders in excess of the limits of the guarantee and that Intercontinental had cabled plaintiff indicating a willingness to increase the guarantee to $150,000. Plaintiff received a letter from defendant dated January 19, 1970, making reference to plaintiff's communication of January 13 and stating "I am certainly in agreement to raise this to $150,000."

On January 19, 1970, plaintiff received a letter amending the guarantee contained in the September 30 document and raising the guarantee to $160,000. It is conceded that this letter was not signed by defendant, and no liability can be attached to him on a basis of that document standing alone.

Thereafter, the whole enterprise turned sour. On September 22, 1970, plaintiff wrote defendant that the total amount due them up to August 31, 1970 was $174,496.20, and insisted on payment immediately, if not from Intercontinental, then from defendant pursuant to the guarantee. Further correspondence followed an attempt to work out the dispute, but these efforts resulted in plaintiff's view, in insufficient payment for the sums expended. In January, 1971, plaintiff turned the matter over to its New York counsel to litigate.

On January 18, 1971, defendant in a letter to New York counsel in answer to a communication of January 12, 1971, states "First, the guarantee is by three people and there are very definite limitations on this guarantee." In a letter dated the same day to H. Thomann, a plaintiff official, defendant states ...

> "Let me refresh your memory as to the status of the guarantee. First of all this guarantee was agreed to by three parties, Mr. Hassin, Mr. Pollman and myself. An amount of $40,000 was frozen as this was allocated to purchase an option to buy stock when the company went public. An additional $60,000 was credit given to the company, and any amount over $100,000 was jointly guaranteed by the three individuals.

Finally, in a letter dated February 19, 1971, defendant for the first time advised plaintiff that he had never committed himself to liability in case of default by Intercontinental.

A copy of the ledger of plaintiff contains a full and complete account showing expenditures on behalf of Intercontinental by plaintiff of $171,158.60.

II

The record stands uncontroverted as to plaintiff's claim that defendant committed himself to a personal guarantee of $100,000. That claim had been clearly established by a fair preponderance of the evidence. See Glasberg v. Krauss, 24 App. Div. 2d 425 (1965); Application of Erin Wine & Liquor Store, Inc., 283 App. Div. 443, aff'd sub. nom. Erin Wine & Liquor Store, Inc. v. O'Connell, 307 N.Y. 768 (1954).

The document in question is on the letterhead of Intercontinental, and plaintiff has produced expert testimony indicating that the signature on the document is that of defendant. Defendant's failure of memory as to his signing the document does not rise to the level of denying that the signature is his. I find plaintiff's claim that defendant executed the letter guarantee dated September 30, 1969, has been established. Pursuant to that guarantee and in reliance upon it plaintiff assumed responsibility for Intercontinental's orders.

Defendant's further responsibility for inducing plaintiff to advance monies in excess of the original $100,000 guarantee has also been established by a fair preponderance of the evidence. Defendant met in Basel in November, 1969, with plaintiff and agreed to increase his personal guarantee to $150,000 provided Leonard Pollman signed the guarantee with him and Kassin. Plaintiff wrote defendant on January 13, 1970, to which letter defendant responded on January 19, 1970. In that response defendant explicitly states that he agrees to raise the guarantee to $150,000 commitment. Moreover, in his letter of January 18, 1971, to plaintiff's counsel, defendant does not deny that he executed such a guarantee, but states that the commitment is by three people. In a letter the same day to Thomann, defendant admits that he has committed himself to a guarantee in excess of $100,000. Since his liability of $100,000 has already been established, these referred-to communications, the authorship of which is not disputed, constitute an admission that he committed himself to the $150,000 guarantee for which he is being sued. It is clear that plaintiff was induced to believe such was defendant's commitment, and pursuant to that understanding plaintiff expended the amounts proved at the trial.

The issue, however, is whether plaintiff's claim as to defendant's liability for the guarantee over $100,000 is barred by the statute of frauds. The single written document that contains this guarantee admittedly was not signed by the defendant. Defendant's liability may be sustained on two grounds, however. The law of New York does not require that the writing binding the party be expressed only in a single document. The statute of frauds is satisfied where separate writings are connected with one another or by the internal evidence of the subject matter, or where the occasion can be pieced together to provide all the essential terms of the agreement, and the result evidences an in praesenti intent of the parties to form a binding agreement. The plaintiff's January 13, 1970, letter and the defendant's January 19, 1970, reply read together are sufficient to meet that test of the statute of frauds. See Crabtree v. Elizabeth Arden Sales Corp., 305 N.Y. 48 (1953); Brauns v. Goldman, 10 App. Div. 2d 328 (1st Dept. 1960), aff'd 9 N.Y. 2d 620 (1961); Lalonde v. Modern Album & Finishing Co., 38 App. Div. 2d 960 (2d Dept. 1972).

Moreover, even though defendant did not sign the subsequent guarantee, he had sufficient subsequent contacts, personally and by letter, with the plaintiff to realize that plaintiff was under the mimpression that he

had committed himself for a further $50,000 guarantee. At no time did he disclose plaintiff of the impression that he had in fact signed the document. Only after this litigation did defendant raise issue concerning the genuiness of his signature. Because of these acts, together with his letter of January 19, 1970, and his letters of January 10, 1971, defendant is estopped from denying that he is bound by the further guarantee. See Petroleum Comp. v. Val-Worth, Inc., 6 N.Y. 2d 556 (1959); Bidding v. Sterling Precision Corp., 34 A.D. 2d 427 (1970). I, therefore, conclude that defendant's liability for a total guarantee of $150,000 has been established.

The counterclaim alleging that $40,000 of the amount in question was for Intercontinental convertible bonds is without merit. These bonds were never issued. There is no reference to them in any of the documents evidencing the guarantee; and indeed, the guarantee specifically bars any set-off or counterclaims as to Intercontinental. The argument that the guarantee involved referred to a $150,000 guarantee to a New York bank is also without merit. The correspondence between the parties refers to defendant's guarantee in order for plaintiff to assume responsibility for orders of Intercontinental to various European suppliers. Defendant's guarantee to a New York bank would have no reference to that.

CONCLUSION

The defendant's liability for reasonable collection expenses and counsel fees in the amount of $32,065.44 to date has been established. The evidence indicates that defendant committed himself to guarantee up to $150,000, plus interest, for any debts which plaintiff incurred on behalf of Intercontinental. Judgment is therefore awarded against defendant in the sum of $32,065.44 for expenses and counsel fees to date and judgment for $150,000, plus interest at 6% from the date of the filing of this action.[1]

SO ORDERED.

Dated: New York, New York
June 12, 1974

Robert L. Carter
ROBERT L. CARTER
U.S.D.J.

1. Parts I and II above constitute the court's findings of fact and conclusions of law.

456A

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Court House in the Borough of Manhattan, City of New York on the 9th day of October in the year of our Lord, One Thousand Nine Hundred and Seventy-three.

PRESENT:
HONORABLE: Robert L. Carter
*United States District Judge.*

Weitzman Trading Company LTD.
— v —
Morton L. Annis

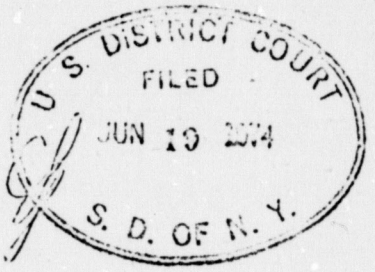
Docket No. 71 Civil 782 R.

Now comes the Plaintiff By Victor A. Kovner and John C. Lankenau

and moves the trial of this cause. Likewise comes the Defendant by Norton Kolin and Leslie Corwin

Thereupon ~~[illegible]~~ and the cause proceeds to Trial. Non-Jury Trial begun OCT 9 1973. OCT 10 1973 Trial cont'd and Concluded. Decision Reserved

457A




UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

WEITNAUER TRADING COMPANY, LTD.,

Plaintiff,

-against-

MORTON L. ANNIS,

Defendant.

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JUDGMENT
#114,530

71 Civil 782 (RLC)

The issues in the above entitled action having been brought on regularly for trial before the Honorable Robert L. Carter, United States District Judge, on October 9 and 10, 1973, and at the conclusion of the evidence, the Court having reserved decision, and the Court thereafter on June 13, 1974, having handed down its Opinion, constituting its findings of fact and conclusions of law in favor of plaintiff, it is,

ORDERED, ADJUDGED and DECREED: That Plaintiff WEITNAUER TRADING COMPANY, LTD., have judgment against the defendant MORTON L. ANNIS in the amount of $32,065.14., for expenses and counsel fees to date, and for the amount of $150,000., plus interest at 6% from date of the filing of this action.

ENTERED

JUN 20 1974

Dated: New York, N.Y.
June 19, 1974

Raymond F. Burghardt
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

458A

- - - - - - - - - - - - - - - - - - - - - - -X

WEITNAUER TRADING COMPANY, LTD., File No. 71 Civ. 782

Plaintiff,

-against-

MORTON L. ANNIS, NOTICE OF APPEAL

Defendant.

- - - - - - - - - - - - - - - - - - - - - - -X

Notice is hereby given that MORTON L. ANNIS, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment in favor of the plaintiff and against the defendant in the amount of $32,065.44 for expenses and counsel fees to date, and the additional amount of $150,000, plus interest at six (6%) percent from the date of the filing of this action, and from each and every part of the said judgment, which judgment was dated June 19, 1974 and filed June 19, 1974, being Judgment 71 Civil 782 (RLC).

RICH, KRINSLY, POSES, KATZ &
LILLIENSTEIN
99 Park Avenue
New York, New York 10016
(212) 867-7200

By _____
Norton I. Katz
Member of the Firm

WEITNAUER TRADING COMPANY, LTD., v. MORTON L. ANNIS

71 Civ. 782

ENDORSEMENT

Plaintiff moves to amend the court's judgment to award interest at the rate of 7-1/2% from November 1, 1969, to August 31, 1972, and thereafter at 6% instead of at 6% from March 1, 1971, as ordered by the court. Plaintiff appears entitled to a higher rate of interest for any period when interest is a awarded prior to September 1, 1972, since the controversy is a commercial transaction. See Caldecott v. Long Island Lighting Co., 417 F. 2d 994, 997 (2d Cir. 1969). Under New York law the legal rate of interest between November, 1969, and September 1, 1972, was 7-1/2%. See Rachlin & Co. v. Tra-Mar, Inc., 33 A.D. 2d 370, 308 N.Y.S. 2d 153 (1st Dept. 1970). Since that date, the rate has been 6% under N.Y.C.P.L.R. §5004, and the effective reach of the amendment has been construed as being prospective only. See Yamamoto v. Costello, 73 Misc. 2d 592, 342 N.Y.S. 2d 33 (Sup. Ct. Nassau Cty. 1973); Pan American World Airways v. Aetna Casualty & Surety Co., 368 F. Supp. 1098, 1141-42 (S.D.N.Y. 1973).

Plaintiff's agreement with defendant provided for payment of guarantee entered into when due or upon demand. Plaintiff demanded full compliance with the guarantee on September 22, 1970. Plaintiff urges that prejudgment interest should begin to run from a date prior to September 22, 1970. The facts, however, do not justify that claim. Prior to September 22, 1970, although there had been default in payment by Intercontinental Wines & Spirits, Ltd., and plaintiff had asserted defendant's liability, it negotiated with defendant further, and its action, at least until September 22, 1970, is not consonant with its assertion that it had invoked the guarantee's terms and

conditions. On September 22, 1970, however, it clearly and unequivocally invoked the agreement. Interest, therefore, is awarded at 7-1/2% from September 22, 1970, to August 31, 1972, and thereafter at 6%.

SETTLE ORDER.

Dated: New York, New York
September 9, 1974

ROBERT L. CARTER
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WEITNAUER TRADING COMPANY, LTD. 461A

Plaintiff,

-against-

MORTON L. ANNIS,

Defendant.

JUDGMENT

74,530

71 Civil 782 (RLC)

----------x

The issues in the above entitled action having been brought on regularly for trial before the Honorable Robert L. Carter,, United States District Judge, on October 9 and 10, 1973, and at the conclusion of the evidence, the Court having reserved decision, and the Court thereafter on June 13, 1974, having handed down its Opinion, constituting its findings of fact and conclusions of law in favor of plaintiff, and plaintiff having moved to amend said Judgment by notice of motion dated June 27, 1974, and on reading and filing the affidavits submitted in support and in opposition to said motion, and upon the decision of the Court filed September 11, 1974, it is

ORDERED, ADJUDGED and DECREED: That the Plaintiff WEITNAUER TRADING COMPANY, LTD., have judgment against the defendant MORTON L. ANNIS, in the amount of $150,000.00 together with interest at the rate of 7-1/2% per annum from September 22, 1970 to August 31, 1972 and from September 1, 1972 and thereafter at the rate of 6% per annum, together with expenses and counsel fees to the

date of the decision after trial in the amount of $32,065.44.

Dated: New York, New York
October 1st 1974

CLERK

By [illegible]
Deputy Clerk
Clerk

463A

For Purposes

FILED
OCT 16 1974
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - -X

WEITNAUER TRADING COMPANY, LTD.,

Plaintiff,

-against-

MORTON L. ANNIS,

Defendant.

File No. 71 Civ. 782 RLC

NOTICE OF APPEAL

- - - - - - - - - - - - - - - - - - - - - - - -X

Notice is hereby given that MORTON L. ANNIS, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment in favor of the plaintiff and against the defendant in the amount of $32,065.44 for expenses and counsel fees to date, and the additional amount of $150,000.00, together with interest at the rate of seven and one-half (7-1/2%) percent per annum from September 22, 1970 to August 31, 1972, and from September 1, 1972 and thereafter at the rate of six (6%) percent per annum, and from each and every part of the said judgment, which judgment was dated October 1, 1974 and filed October 3, 1974, being Judgment 71 Civil 782 (RLC).

Dated: New York, New York
October 14, 1974

RICH, KRINSLY, POSES, KATZ &
LILLIENSTEIN
99 Park Avenue
New York, New York 10016
(212) 867-7200

By _____
Norton I. Katz
Member of the Firm

✓ Cahill Gordon Taylor Howard
40 Wall Street
New York, N.Y.

ONLY COPY AVAILABLE